



# City of Hampton, VA

## Meeting Minutes

### City Council

22 Lincoln Street  
Hampton, VA 23669  
[www.hampton.gov](http://www.hampton.gov)

W. H. "Billy" Hobbs, Jr.  
Will Moffett  
Chris Snead  
Molly Joseph Ward, Mayor

Christopher G. Stuart  
Donnie R. Tuck  
George E. Wallace

Staff:  
Mary Bunting, City Manager  
Cynthia Hudson, City Attorney  
Katherine K. Glass, CMC, Clerk of Council

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Wednesday, November 14, 2012      7:01 PM      Council Chambers, 8th Floor, City Hall

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#### CALL TO ORDER/ROLL CALL

#### MOLLY JOSEPH WARD PRESIDED

**PRESENT:** W. H. "Billy" Hobbs, Jr., Will Moffett, Chris Snead, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace

**INVOCATION** - Councilman W. H. "Billy" Hobbs, Jr.,

#### PLEDGE OF ALLEGIANCE TO FLAG

#### MAYOR'S COMMENTS

Mayor Ward welcomed everyone to the evening meeting and then opened the floor for Councilman Stuart to make a comment.

Councilman Stuart announced that Hampton's first full-time Commonwealth's Attorney, Mr. Woodrow "Skip" Maust, passed away last week. He noted Mr. Maust was elected to serve at the age of 29. He asked all citizens to keep Mr. Maust's family in their thoughts and prayers.

#### CONSENT AGENDA

Clerk of Council Ms. Katherine Glass read the protocol for the consent agenda items. Mayor Ward noted no requests had been made to pull any items from the consent agenda, and therefore, she called for the motion to approve items 1-12.

#### CONSENT ITEMS

1. 12-0388 Resolution Accepting and Appropriating Funds for the FY 2013 Comprehensive Services Act Pool Funds

**BE IT RESOLVED** by the Council of the City of Hampton, Virginia, that the total Comprehensive Services Act Pool Funds in the amount of \$7,050,000 be appropriated

for the fiscal year beginning July 1, 2012 and ending June 30, 2013. In addition, the Council accepts any additional supplemental revenues from the state and Medicaid for the Funds Pool subject to the availability of local match.

APPROVED items 1 through 12 on the consent agenda.

**Motion made by:** Councilmember Christopher G. Stuart

**Seconded by:** Vice Mayor George E. Wallace

**Ayes:** 7 - W. H. "Billy" Hobbs, Jr., Will Moffett, Chris Snead, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly Joseph Ward

**Nays:** 0

2. 12-0397 Resolution Determining the Center for Therapeutic Justice to be the Only Source Practicable Available from Which to Procure "Inside" Community Treatment Project For Inmates Incarcerated in the Hampton Community Corrections Center and Authorizing the Negotiation and Execution of a Purchase Contract with the Center for Therapeutic Justice.

**WHEREAS**, Hampton Sheriff's Office recognizes the inmates needs in providing through the Center for Therapeutic Justice (CFTJ) a program for inmates who are affected by moderate or severe substance abuse problems and/or mental health problems; and

**WHEREAS**, the Center for Therapeutic Justice is the sole source for Community Model in Corrections, providing national and regional services to the criminal justice system utilizing a social model approach for community building in collaboration with policy makers and other leaders in the correctional community; and

**WHEREAS**, the maximum cost for all services provided by CFTJ and its reimbursable expenses incurred for the fiscal year 2012-2013 shall not exceed the award of the grant; and

**WHEREAS**, CTFJ is an LLC (limited liability company) therefore, CFTJ is a for-profit corporation or private business partnership licensed to do business in Virginia. CFTJ provides Community Model Programs and services to agencies and institutions. The facility is public entity authorized to contract for certain services to be provided to inmates incarcerated in the Facility.

**NOW, THEREFORE, BE IT RESOLVED** by the Council of the City of Hampton, Virginia as follows:

1. That the contract for rendering services to inmates in the facility described above may be awarded to the Center for Therapeutic Justice as a "sole source" without competitive sealed bidding or competitive negotiation as set forth in Virginia Code Section 2.2-4303.E;
2. That the City Manager or his authorized designee is hereby authorized to negotiate and execute a service contract with the Center for Therapeutic Justice; and
3. That the notice awarding the contract to the Center for Therapeutic Justice shall be posted in a public place pursuant to Virginia Code Section 2.2-4303.E.

APPROVED items 1 through 12 on the consent agenda.

**Motion made by:** Councilmember Christopher G. Stuart

**Seconded by:** Vice Mayor George E. Wallace

**Ayes:** 7 - W. H. "Billy" Hobbs, Jr., Will Moffett, Chris Snead, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly Joseph Ward

**Nays:** 0

3. 12-0396 Resolution Approving the City of Hampton, Virginia's Participation and Appropriation of the 2012 Residential Substance Abuse Treatment Grant (RSAT)

**WHEREAS**, the Hampton Sheriff's Office has been awarded the 2012 Residential Substance Abuse Treatment grant of \$78,828 in Federal Funds and \$26,276 in matching funds for a total award of \$105,104.

**WHEREAS**, the grant award covers the period 10/1/2012 through 9/30/2013;

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Hampton accepts and appropriates the 2012 Substance Abuse Treatment Grant in the amount of \$105,104, and any other supplemental funding, awarded to the Hampton Sheriff's Office made by the Virginia Department of Criminal Justice Services in accordance with the grant agreement;

APPROVED items 1 through 12 on the consent agenda.

**Motion made by:** Councilmember Christopher G. Stuart

**Seconded by:** Vice Mayor George E. Wallace

**Ayes:** 7 - W. H. "Billy" Hobbs, Jr., Will Moffett, Chris Snead, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly Joseph Ward

**Nays:** 0

4. 12-0398 Resolution Approving the City of Hampton, Virginia's Participation and Appropriation of the FY2009 State Homeland Security Program Grant through the Virginia Department of Emergency Management

**WHEREAS**, the Virginia Department of Emergency Management has awarded a State Homeland Security Program Grant using leftover FY2009 funding; Catalog of Federal Domestic Assistance Number 97.073 to the City of Hampton in the amount of \$2,800 with no local match required; which is designated as a regional grant to purchase one each Pet Shelter Fly Away Kits for the cities of Hampton and Newport News and;

**WHEREAS**, the grant award covers the period 6/12/2012 through 11/30/2012;

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Hampton accepts and appropriates the FY2009 State Homeland Security Program Grant; Catalog of Federal Domestic Assistance Number 97.073 in the amount of \$2,800 and any additional funding, awarded by the Virginia Department of Emergency Management in accordance with the grant agreement.

APPROVED items 1 through 12 on the consent agenda.

**Motion made by:** Councilmember Christopher G. Stuart

**Seconded by:** Vice Mayor George E. Wallace

**Ayes:** 7 - W. H. "Billy" Hobbs, Jr., Will Moffett, Chris Snead, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly Joseph Ward

**Nays:** 0

5. 12-0399 Resolution to Accept and Appropriate the Virginia Association of Hazardous Materials Response Specialists (VAHMRS) Grant Funds Given to the City of Hampton-Division of Fire & Rescue in the Amount of \$2,000.

**WHEREAS**, the Virginia Association of Hazardous Materials Response Specialists (VAHMRS) has awarded the City of Hampton-Division of Fire & Rescue the amount of \$2,000 to purchase one Indestructo Decon Shower System; and

**WHEREAS**, the City of Hampton-Division of Fire & Rescue will meet the grant requirements by purchasing one Indestructo Decon Shower System;

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF HAMPTON, VIRGINIA:** that the City Council of the City of Hampton, Virginia accepts and appropriates \$2,000 from the Virginia Association of Hazardous Materials Response Specialists (VAHMRS) in accordance with their scholarship and grant program.

APPROVED items 1 through 12 on the consent agenda.

**Motion made by:** Councilmember Christopher G. Stuart

**Seconded by:** Vice Mayor George E. Wallace

**Ayes:** 7 - W. H. "Billy" Hobbs, Jr., Will Moffett, Chris Snead, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly Joseph Ward

**Nays:** 0

6. 12-0401 Resolution Requesting VDOT to Add the Attached List of New Streets on Fort Monroe to the State "Principal/Minor Arterial and Collector/Local" Street List

**WHEREAS**, the Virginia General Assembly on February 22, 1985 passed House Bill 1269 requiring municipal streets to be divided into two (2) categories: "Principal/Minor Arterial Roads and Collector/Local Streets"; and

**WHEREAS**, the Virginia State Highway and Transportation Commission July 1, 1986 revised its policy concerning street addition/deletions as a result of Virginia General Assembly House Bill 1269; and

**WHEREAS**, the City of Hampton contains roadways which have been built as a result of new construction; and

**WHEREAS**, the Hampton City Council wishes to add various roadways as

"Principal/Minor Arterial Roads and Collector/Local Streets" in order to qualify for municipal assistance payments;

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF HAMPTON, VIRGINIA:** that the Hampton City Council request that the attached list of roadways be added to the "Principal/Minor Arterial Roads and Collector/Local Streets" list.

**BE IT FURTHER RESOLVED,** that the Hampton City Council urges the Virginia State Highway Commission and Transportation commission to approve this request as submitted.

APPROVED items 1 through 12 on the consent agenda.

**Motion made by:** Councilmember Christopher G. Stuart

**Seconded by:** Vice Mayor George E. Wallace

**Ayes:** 7 - W. H. "Billy" Hobbs, Jr., Will Moffett, Chris Snead, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly Joseph Ward

**Nays:** 0

A copy of the request for street additions or deletions for Municipal assistance payments is attached to the minutes.

7. 12-0402 Resolution Determining Carlton Scale to be the Only Source Practicably Available From Which to Procure Mettler-Toledo Goods and Services and Authorizing the Negotiation and Execution of a Purchase Contract With Carlton Scale as a "Sole Source"

**WHEREAS,** Hampton City Council recognizes the public interest in providing, through its Public Works/NASA Steam Plant, the most efficient means reasonably available and affordable to maintain the vehicle scale at the Steam Plant;

**WHEREAS,** Carlton Scale is the most efficient vendor through which to procure Mettler-Toledo replacement parts and services, which are required for proper operation of the vehicle scale, load cells, and signaling terminals at the Steam Plant; and

**WHEREAS,** the price at which Carlton Scale has offered for Mettler-Toledo replacement parts and service has been determined to be fair and reasonable.

**NOW, THEREFORE, BE IT RESOLVED** by the Council of the City of Hampton, Virginia as follows:

1. That the contract for procuring goods and services described above may be negotiated and awarded to Carlton Scale as a "sole source" without competitive sealed bidding or competitive negotiation as set forth in Virginia Code Section 2.2-4303(E);

2. That the City Manager or her authorized designee is hereby authorized to negotiate and execute a purchase contract with Carlton Scale; and

3. That the notice awarding the contract to Carlton Scale shall be posted in a public place pursuant to Virginia Code Section 2.2-4303(E).

APPROVED items 1 through 12 on the consent agenda.

**Motion made by:** Councilmember Christopher G. Stuart

**Seconded by:** Vice Mayor George E. Wallace

**Ayes:** 7 - W. H. "Billy" Hobbs, Jr., Will Moffett, Chris Snead, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly Joseph Ward

**Nays:** 0

8. 12-0406 Resolution Approving FY2013 1st Quarter Budget Adjustments

**BE IT RESOLVED**, by the City Council of the City of Hampton, Virginia that the attached first quarter budget adjustments pertaining to fiscal year 2013 be approved.

APPROVED items 1 through 12 on the consent agenda.

**Motion made by:** Councilmember Christopher G. Stuart

**Seconded by:** Vice Mayor George E. Wallace

**Ayes:** 7 - W. H. "Billy" Hobbs, Jr., Will Moffett, Chris Snead, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly Joseph Ward

**Nays:** 0

A copy of the FY13 First Quarter Budget Adjustments is attached to the minutes.

9. 12-0407 Resolution Approving a 20' x 315.8' Utility and Access Easement (Totaling 6,316 Square Feet, More or Less) to Global Signal Acquisitions III, LLC on City Property Known as Newmarket Creek Canal (LRSN 3001817) Adjacent to Francis Mallory Elementary School Located at 331 Big Bethel Road (LRSN 3003405)

**WHEREAS**, on or around November 15, 1999, the School Board of the City of Hampton and Sprintcom, Inc. entered into a Site Lease for the installation and operation of an equipment building and appurtenant facilities to operate a telecommunications facility, including a utility and access area, at Francis Mallory Elementary School located at 331 Big Bethel Road (LRSN 3003405);

**WHEREAS**, unbeknownst to either party, a portion of the leased site included property owned by the City;

**WHEREAS**, to correct the record, Sprintcom's successor, Global Signal Acquisitions III, LLC, requests a 20' x 315.8' utility and access easement (totaling 6,316 square feet, more or less) on City property known as Newmarket Creek Canal (LRSN 3001817), as identified on the attached ArcView drawing; and

**WHEREAS**, the grant of the access and utility easement to Global Signal Acquisitions III, LLC is deemed fair and reasonable; and the terms of the Deed of Easement, a copy of which is attached to this Resolution, are reasonable and acceptable.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF HAMPTON, VIRGINIA:**

1. That the 20' x 315.8' utility and access easement (totaling 6,316 square feet, more or less) on City property known as Newmarket Creek Canal (LRSN 3001817) to Global Signal Acquisitions III, LLC is hereby approved; and

2. That the City Manager or her designee is hereby authorized to execute the Deed of Easement between the City of Hampton and Global Signal Acquisitions III, LLC as set forth in this Resolution.

APPROVED items 1 through 12 on the consent agenda.

**Motion made by:** Councilmember Christopher G. Stuart

**Seconded by:** Vice Mayor George E. Wallace

**Ayes:** 7 - W. H. "Billy" Hobbs, Jr., Will Moffett, Chris Snead, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly Joseph  
Ward

**Nays:** 0

A copy of the drawing is attached to the minutes.

10. 12-0408 Ordinance To Amend And Reenact Chapter 2 Of The Code Of The City Of Hampton Entitled "Administration", Section 2-36 To Address Cancellation Of Meetings, Section 2-43 To Address Removal of Consent Agenda Items And To Repeal Section 2-52 Entitled Minutes Of Closed Meetings.

APPROVED items 1 through 12 on the consent agenda.

**Motion made by:** Councilmember Christopher G. Stuart

**Seconded by:** Vice Mayor George E. Wallace

**Ayes:** 7 - W. H. "Billy" Hobbs, Jr., Will Moffett, Chris Snead, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly Joseph  
Ward

**Nays:** 0

11. 12-0419 Approval of the minutes from the special meetings of October 3, 2012, and the afternoon, public comment and evening sessions of October 10, 2012.

APPROVED items 1 through 12 on the consent agenda.

**Motion made by:** Councilmember Christopher G. Stuart

**Seconded by:** Vice Mayor George E. Wallace

**Ayes:** 7 - W. H. "Billy" Hobbs, Jr., Will Moffett, Chris Snead, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly Joseph  
Ward

**Nays:** 0

12. 12-0422 Resolution Authorizing the Appropriation of \$205,689 from the Information Technology Fund Unrestricted Net Assets to Provide for an Upgraded and More Reliable E-mail Service.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF HAMPTON, VIRGINIA:** The sum of \$205,689 is hereby appropriated from the

Information Technology Fund Unrestricted Net Assets to provide for an upgraded and more reliable e-mail service.

APPROVED items 1 through 12 on the consent agenda.

**Motion made by:** Councilmember Christopher G. Stuart

**Seconded by:** Vice Mayor George E. Wallace

**Ayes:** 7 - W. H. "Billy" Hobbs, Jr., Will Moffett, Chris Snead, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly Joseph Ward

**Nays:** 0

## **THERE WERE NO PRESENTATIONS, PROCLAMATIONS OR AWARDS**

## **PUBLIC HEARINGS**

The Clerk read the protocol for the Public Hearing items.

## **REZONINGS AND USE PERMITS**

13. 12-0412 Rezoning Application No. 1294-2011 by SCI Virginia Funeral Services Inc. to rezone a parcel (LRSN 13000760) totaling 14.495+ acres from One Family Residence (R-9) District to Rural Residential (R-R) District with conditions to permit the expansion of an existing cemetery.

Ms. Bunting introduced Senior City Planner Mr. Donald Whipple to give Council a combined briefing on items 13 and 14 simultaneously. A copy of the presentation is attached to the minutes.

Mr. Whipple greeted those on the dais and gave the following overview information regarding the application. The rezoning application is for rezoning 14.5 acres of land from R-9 to R-R (Rural Residential District). The use permit is for use as a cemetery. The site is located at the southwest corner near the intersection of Hampton Roads Center Parkway and North Armistead Avenue known as Parklawn Cemetery as outlined on slide 4 of the presentation. The cemetery has been in operation since its establishment in 1969. The proposed expansion began in February of 2011. This proposal ties in nicely with providing necessary community services and facilities for the City and is compatible with the surrounding development in that it is adjacent to healthcare facilities as well as an existing cemetery. A community meeting was held September 26, 2012, where only a few citizens were in attendance. There were no speakers in opposition to the request.

Mr. Whipple reviewed some of the proffered conditions listed on slides 8 and 9 of the presentation. He then noted that the green areas shown on slide 10 of the presentation represent expansion of what would be added and the red boxes would be proposed mausoleum buildings.

Mr. Whipple stated staff and the Planning Commission recommend approval of rezoning 1294-2011 with nine proffered conditions and of Use Permit #1072-2011 with three conditions. Both lists of conditions are attached to the minutes.

Councilman Tuck noted there are a number of abandoned cemeteries in our City which we try to maintain, and this will be adjacent to one that (he assumes) is already filled.



He asked how long it takes to fill a cemetery and whether or not there are plans in place where the cemetery will be maintained once it is full and the company will not be able to get any more revenue from it.

Mr. Whipple noted the applicant would have to comment regarding how quickly cemeteries fill up and their need for expansion. He then explained that the applicant has had ownership of the property since inception; however, it was never included as part of the original Use Permit (if one was required at that time), and the current zoning requirements were not in place.

Mr. Whipple addressed Councilman Tuck's question regarding the conditions for the Use Permit. He explained maintenance is included as part of our local law with respect to our City Code which includes language that addresses maintenance of cemeteries. He added that the issue we have with some of the older cemeteries is they haven't gone through the Use Permit process because they predate the Zoning Ordinance.

Councilman Stuart commented that the older cemeteries came about prior to modern thought being applied. He asked to hear from the petitioner regarding "Perpetual Care" where payments are made into a fund to make sure facilities like this are taken care of in perpetuity. Vice Mayor Wallace noted he had the same question that Councilman Stuart proposed.

Public Hearing:

Mayor Ward requested that Councilman Stuart's question be addressed during the Public Hearing.

Mr. Larry Cumming, 2236 Cunningham Drive, representative for the applicant, called upon General Manager of Parklawn Memorial Park Mr. James Stuart to address Councilman Stuart's question.

Mr. Stuart explained 10% of all of the cemetery proceeds goes into a perpetual care fund. He noted this fund was established in 1964 and continued explaining that when the cemetery is full, the money is there to maintain the cemetery forever. He said Virginia has approximately 86 other cemeteries similar to theirs and there are approximately a dozen which are filled and they have the money to maintain them. He noted that this process is checked quarterly by the State of Virginia.

Mayor Ward called for additional speakers from the audience regarding items number 13 or 14. As there were none, Mayor Ward closed the Public Hearing.

Councilman Stuart commented that while these properties were developed by his uncle, they are not something in which he has had an ownership position or has ever been employed by. He noted that during the development of these properties, the first time African Americans in a non-church cemetery were legally able to be buried in the City of Hampton occurred on these properties.

PRESENTED by Donald Whipple, Senior City Planner.

HELD PUBLIC HEARING - a joint public hearing was held for 12-0412 and 12-0413. Lawrence G. Cumming, Counsel for the applicant,

accompanied by James Stuart, the General Manager of the cemetery, addressed Council.

APPROVED - subject to 9 conditions.

**Motion made by:** Councilmember Christopher G. Stuart

**Seconded by:** Councilmember W. H. "Billy" Hobbs, Jr.

**Aye:** 7 - W. H. "Billy" Hobbs, Jr., Will Moffett, Chris Snead, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly Joseph Ward

**Nay:** 0

14. 12-0413 Use Permit Application No. 1072-2011 by SCI Virginia Funeral Services Inc. to construct and operate a cemetery on a parcel (LRSN# 13000760) totaling 14.495+ acres located west of the intersection of Vernon Stuart Drive and North Armistead Avenue.

Discussion for this item took place simultaneously with item 13.

The list of conditions for this item is attached to the minutes.

PRESENTED by Donald Whipple, Senior City Planner.

HELD PUBLIC HEARING - a joint public hearing was held for 12-0412 and 12-0413.

APPROVED - subject to 3 conditions.

**Motion made by:** Councilmember Christopher G. Stuart

**Seconded by:** Councilmember W. H. "Billy" Hobbs, Jr.

**Aye:** 7 - W. H. "Billy" Hobbs, Jr., Will Moffett, Chris Snead, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly Joseph Ward

**Nay:** 0

15. 12-0414 Rezoning Application No. 1304-2012 by Virginia Health Services, Inc. to rezone 3.43+ acres at 1028 Topping Lane (LRSN 4000567) from Multiple Residence (R-M) District to conditional Neighborhood Commercial (C-1) to expand the building and number of beds permitted for the convalescent center.

City Manager Bunting introduced City Planner Mr. Michael Hayes to brief Council on items 15 and 16 simultaneously. A copy of the presentation is attached to the minutes.

Mr. Hayes greeted those on the dais and stated the rezoning is from the R-M (Multi-family) district which allows a number of other uses and one that the City has been phasing out on the ground over time. He explained the applicant is requesting C-1 because this use is allowed under the current district in a similar fashion as a C-1 district. He noted the applicant is working with the City on phasing out the zoning from that standpoint.

Mr. Hayes defined a convalescent center as a home for people who need constant nursing care. He noted that the location of the site is shown on slide 4 of the

presentation. He then reviewed slide 5 and stated the yellow portion represents the existing facility, and the orange portion represents the expansion. He explained the proposed expansion would increase the number of beds in the facility from 60 to 70 and would provide some single bed rooms.

Mr. Hayes reviewed slide 7 of the presentation and stated that in analyzing this application, staff has looked to the Community Plan for the adopted recommendations which include high density residential for the site, specific quality care for seniors and others who need constant care, and ensuring as development occurs in existing neighborhoods that we maintain a high quality of character in those neighborhoods.

Mr. Hayes reviewed slide 8 of the presentation which summarizes some of the conditions. He stated the request is for a 70 bed maximum facility, the site plan has been proffered by the applicant and the building materials will be the same as the existing materials (brick). He noted the facility is a one story building and staff believes it will fit in with the character of the neighborhood.

Mr. Hayes stated staff recommends approval of this Rezoning Application with nine proffered conditions as well as the Use Permit with four conditions. The list of conditions is attached to the minutes.

Mayor Ward asked if there were any questions for the applicant or his attorney. There were no questions posed for either of them. She then noted there were no citizens signed up to speak and called for any speakers from the audience. There being none, Mayor Ward closed the Public Hearing.

The list of conditions for this item is attached to the minutes.

PRESENTED by Michael Hayes, Senior City Planner.

HELD PUBLIC HEARING - a joint public hearing was held on 12-0414 and 12-0415. There were no speakers on the item.

APPROVED - subject to 9 conditions.

**Motion made by:** Councilmember Christopher G. Stuart

**Seconded by:** Councilmember W. H. "Billy" Hobbs, Jr.

**Aye:** 7 - W. H. "Billy" Hobbs, Jr., Will Moffett, Chris Snead, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly Joseph Ward

**Nay:** 0

16. 12-0415 Use Permit Application No. 1083-2012 by Virginia Health Services, Inc. at 1028 Topping Lane (LRSN 4000567) for the expansion of the existing building and number of beds permitted for the convalescent center.

Discussion for this item took place simultaneously with item 15. The list of conditions for this item is attached to the minutes.

PRESENTED by Michael Hayes, Senior City Planner.

HELD PUBLIC HEARING - a joint public hearing was held on 12-0414 and 12-0415. There were no speakers on the item.

APPROVED - subject to 4 conditions.

**Motion made by:** Councilmember Christopher G. Stuart

**Seconded by:** Vice Mayor George E. Wallace

**Aye:** 7 - W. H. "Billy" Hobbs, Jr., Will Moffett, Chris Snead, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly Joseph Ward

**Nay:** 0

### CONDITIONAL PRIVILEGE

17. 12-0410 Conditional Privilege Application No. 130-2012: Proposal by Phoebus Investors, LLC c/o John W. Boone to provide live entertainment within an existing restaurant at 24 N. Mallory Street (LRSN 12001982).

City Planner Ms. Tamar Green briefed Council on the item. A copy of the presentation is attached to the minutes.

Ms. Green reviewed the location of the site as shown on slides 3 and 4 of the presentation. Specifically, the site is located at 24 North Mallory Street across from Classic Image Hair Salon, Color Me Tan Tanning Studio, one family resident on Tennis Lane, Pearls Pottery Shop and Victoria Station Tea House and Restaurant.

Ms. Green stated the site as well as surrounding properties is zoned C-2 limited commercial which permits live entertainment in conjunction with a restaurant subject to a conditional privilege.

Ms. Green stated the most pertinent conditions relate to the hours of operation, sound, capacity, ABC license and term of permit.

Ms. Green concluded her presentation stating staff and the Planning Commission recommend approval of this application.

In response to Councilman Stuart, Ms. Green noted a community meeting was held November 13, 2012; however, no members of the public were in attendance.

Mayor Ward opened the floor to Council for questions posed to the applicant. There were no questions posed. She then stated there were no citizens signed up to speak and called for any speakers from the audience. As there were none, Mayor Ward closed the Public Hearing.

#### Conditions:

1. Issuance of Permit  
The Conditional privilege applies only to 24 North Mallory Street in the location specified on the plat submitted with the application on August 9, 2012 and is not transferable to another location.
2. Location of Live Entertainment

The stage or performance area shall be located in the restaurant as indicated on the floor plan submitted with this application on August 9, 2012 - prepared by John N. Ruth, dated March 4, 2003. The dimensions of the floor area are 18ft x 20 ft. All live entertainment equipment and performers shall be contained in this area during all performances.

3. Hours of Operation

The hours of operation for live entertainment shall be limited to the following

Sunday 11:00 AM until 12:00 AM  
Monday 11:00 AM – 12:00 AM  
Tuesday 11:00 AM – 12:00 AM  
Wednesday 11:00 AM – 12:00 AM  
Thursday 11:00 AM – 12:00 AM  
Friday 11:00 AM – 1:00 AM  
Saturday 11:00 AM – 1:00 AM

4. Capacity

During the time that live entertainment is being provided, patronage shall be limited to 105 persons or the maximum capacity as determined by a City building official, whichever is fewer.

5. Sound

Any sound or noise from amplified music shall not exceed a noise level measurement of 60 dBA upon the real property of another as determined by a sound level meter using the "A" weighting scale in accordance with the American National Standard Institute."

6. Staffing

Sufficient staff shall be provided to monitor patron behavior upon their exit of the building into the surrounding area.

7. Virginia Department of Alcoholic Beverage Control

The Conditional Privilege shall not supersede any restrictions or requirements imposed by the Virginia Department of Alcoholic Beverage Control.

8. Revocation

The City Council shall have the ability to revoke Conditional Privilege No. 130-2012 upon two (2) or more violations of any of the attached conditions

9. Nullification

a. The Conditional Privilege shall become null and void if the use is not established within twelve months of the date of approval by the City Council.

b. The Conditional Privilege shall become null and void if the facility is not used for the permitted use for a period of six consecutive months.

10. Term of Permit

The Conditional Privilege shall be valid for 18 months from the date of approval by the Hampton City Council. After 12 months of operation, prior to the expiration date, the Conditional Privilege will be scheduled for review by the Director of Community Development (the "Director") to consider if the continuation of the Conditional Privilege would not be detrimental to the public health, safety, and welfare and that to continue the activities under the Conditional Privilege would not cause public inconvenience, annoyance, disturbance, or have an undue impact on the community or be incompatible with other uses of land in the zoning district. The review will be based, in part, upon a physical site review, traffic flow and control, access to and circulation within the property, off-street parking and loading, hour and manner of operation, noise, light, neighborhood complaints, police service calls, and any violations of any federal, state, or local law. If after review, the Director determines that the Conditional Privilege would not be detrimental to the public health, safety, and welfare and that to continue the activities

under the Conditional Privilege would not cause public inconvenience, annoyance, disturbance, or have an undue impact on the community or be incompatible with other uses of land in the zoning district, the Director may administratively extend the Conditional Privilege in five (5) year increments. Each such extension shall be subject to the same administrative review. If the Director determines that the Conditional Privilege would be detrimental to the public health, safety, and welfare and that to continue the activities under the Conditional Privilege would cause public inconvenience, annoyance, disturbance, or have an undue impact on the community or be incompatible with other uses of land in the zoning district, the Director will notify the Permittee of a denial of the extension in writing. The denial of an extension of the Conditional Privilege will not require the removal of any structure or structures constructed or installed for the live entertainment area(s). A Permittee aggrieved by the decision of the Director may, upon written request within 30 days of the decision, have the matter reviewed by the Planning Commission and the City Council. Nothing contained herein shall limit the rights of a Permittee to seek a new Conditional Privilege.

PRESENTED by Tamar Green, City Planner.

HELD PUBLIC HEARING - there were no speakers on the item.

APPROVED - subject to 10 conditions.

**Motion made by:** Councilmember Christopher G. Stuart

**Seconded by:** Vice Mayor George E. Wallace

**Aye:** 7 - W. H. "Billy" Hobbs, Jr., Will Moffett, Chris Snead, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly Joseph Ward

**Nay:** 0

18. 12-0411 Conditional Privilege Application No. 131-2012: Proposal by Tiffany Barber & Kimberly Williams T/A Mom's Tot Spot CDC, to operate a Day Care 3 for up to 89 children at 502B Woodland Road [LRSN 11001717].

City Planner Ms. Alison Alexander briefed Council on the item. A copy of the presentation is attached to the minutes.

Ms. Alexander stated the applicants are proposing to operate a daycare for a maximum of 89 children between the ages of 16 months and 11 years old from 6:30 a.m. to 6:00 p.m. Monday through Friday.

Ms. Alexander described the location of the site as shown on slides 4 and 5 of the presentation. The site is specifically located at 502B Woodland Road; the applicant would be leasing the rear building from the Hampton Church of Christ.

Ms. Alexander noted that the property is zoned R-9 and R-11, both of which permit a daycare 3 with the approval of a conditional privilege.

Ms. Alexander stated a community meeting was held September 29, 2012. She added that several members of the public were in attendance and there were no speakers in opposition to this use.

Ms. Alexander stated the daycare will be operated in an existing building served by a 110 space parking lot; City traffic engineers believe there is sufficient parking and have approved the circulation plan.

Ms. Alexander closed her presentation stating both staff and the Planning Commission recommend approval of this conditional privilege application with 10 conditions.

Mayor Ward stated no citizens signed up to speak and called for any speakers from the audience. There being none, Mayor Ward closed the Public Hearing.

#### Conditions

1. Issuance of Permit

The Conditional Privilege applies only to Mom's Tot Spot CDC at 502B Woodland Road, and is not transferable to another location.

2. Hours of Operation

The hours of operation shall be limited to 6:30 AM until 6:00 PM Monday through Friday.

3. Traffic

Loading and unloading of children from vehicles shall be conducted on site and not on any public street.

4. Ledger

The applicant must maintain a daily ledger containing the names of children cared for which shall be available for inspection by authorized personnel of the City of Hampton without notice.

5. Certificate of Occupancy

The applicant must obtain a Certificate of Occupancy prior to commencing the day care operation.

6. Licensing

The applicant must maintain a license with the Virginia Department of Social Services.

7. Capacity

The day care center capacity shall not exceed eighty-nine (89) children, or the number listed on the capacity certificate, whichever is fewer.

8. Age

The ages of children shall range from sixteen (16) months to eleven (11) years of age.

9. Nullification

a. The Conditional Privilege shall become null and void if the use is not established within twelve (12) months of the date of approval by City Council.

b. The Conditional Privilege shall become null and void if the facility is not used for the permitted use for a period of six consecutive months.

10. Termination

Notwithstanding any condition or provision of this Conditional Privilege to the contrary, the Conditional Privilege may be terminated immediately for violation of any terms or

conditions of the Conditional Privilege, a violation of federal, state, or local law pertaining to the day care licensing required by the Virginia Department of Social Services, or any criminal violations of federal, state, or local law pertaining to the care of minors.

PRESENTED by Alison Alexander, City Planner.

HELD PUBLIC HEARING - there were no speakers on the item.

APPROVED subject to 10 conditions.

**Motion made by:** Vice Mayor George E. Wallace

**Seconded by:** Councilmember Christopher G. Stuart

**Aye:** 7 - W. H. "Billy" Hobbs, Jr., Will Moffett, Chris Snead, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly Joseph Ward

**Nay:** 0

## RESOLUTIONS

Mayor Ward recused herself from this item, and therefore, Vice Mayor Wallace presided over the next portion of the meeting.

19. 12-0400 Amend Section 3.01 Of The City Charter Regarding The Election And Terms Of The Mayor And Councilmembers To Require Resignation Of Midterm Councilmembers Who Run For Office Of Mayor

**WHEREAS**, Section 3.01 of the Hampton City Charter does not currently address what occurs with a councilmember's seat should they desire to be a candidate for the office of Mayor; and

**WHEREAS**, the Hampton City Council deems it is its best interest to amend Section 3.01 of the City Charter to provide that a councilmember desiring to be a candidate for the office of Mayor must tender their resignation as councilmember to be effective on June 30<sup>th</sup> of that election year; and

**WHEREAS**, it is deemed that this amendment is in the best interest of the citizens of Hampton,

**NOW, THEREFORE, BE IT RESOLVED**, by the city council that the General Assembly of the Commonwealth of Virginia be requested to amend Section 3.01 of the Charter of the City of Hampton to read as follows:

### **Sec. 3.01. - Composition; election and terms of mayor and councilmembers.**

The council shall consist of seven (7) members, a mayor and six (6) councilmen, who shall be elected at large from the qualified voters of the city. There shall be a general municipal election on the first Tuesday in May of each even-numbered year. In May of nineteen hundred eighty-six there shall be elected three (3) councilmen, and in May of nineteen hundred eighty-eight there shall be elected three (3) councilmen and thereafter their respective successors shall be elected every four (4) years. In the May nineteen hundred eighty-four municipal election and every four (4) years thereafter there shall be



elected at large from the voters of the city a mayor. The members shall take office on July one of the year in which their election takes place and shall qualify in the manner prescribed by general law, and remain in office until their successors have qualified.

Provided, however, that in the municipal election held in May, nineteen hundred eighty-two, there shall be elected two (2) councilmen to serve four-year terms and a mayor to serve a two-year term and in the municipal election held in May, nineteen hundred eighty-four, there shall be elected four (4) councilmen with the councilman receiving the smallest vote among the four (4) elected serving a two-year term and the remaining three (3) councilmen serving four-year terms; in such year a mayor shall be elected as hereinabove provided.

In the event any member of city council during his or her tenure of office shall desire to be a candidate for the office of mayor, he or she shall be eligible to do so, but shall tender resignation as a member of city council at least ten days prior to the final date for the filing of petitions and notices of acceptance as specified by general law, such resignation to be effective on June 30<sup>th</sup> of the election year. Such resignation shall state the council member's intention to run for the office of mayor and shall require no formal acceptance by the remaining members of city council and shall be final and irrevocable as of the date it is tendered.

The remaining two year term of office of any city council member who has resigned for the stated purpose of running for the office of mayor shall be filled at the same succeeding general municipal election at which the office of mayor is filled. Such two year term shall begin on the first day of July next following the date of such election.

The council shall be a continuing body, and no measure pending before it shall abate or be discontinued by reason of the expiration of the term of office or the removal of the members of the body or any of them.

#### Public Hearing:

Mr. Edwin Boone, 48 Snow Street, made the following statement: When President Obama ran for the office of the Presidency, he did not have to give up his position. When Mitt Romney ran for President, he didn't have to give up his position, and even though Mitt Romney lost, he still has his job. The President won, but still didn't have to give up his position. When John McCain ran for office and lost, he didn't have to give up his position. So, what is this, another new Ordinance of the gang of four votes out of seven to take out the ozone or something? The highest elected officials don't have to give up their positions when they run for office whether they lose or not. Thank you.

Mr. Eddie Deerfield, 1515 Garrow Circle, made the following statement: Vice Mayor, I don't know who came up with this idea, but it is not constitutional. There is no way in the world this Council can turn around and pass a resolution to stop someone who wants to run for higher office to make him resign. It is not done in any State that I know of and it is not done for any higher office than State that I know of. Paul Ryan just ran for Vice President and he still is a Congressman. I think you are violating the Constitutional rights of Councilmembers that want to move up in office. I think they have that right to move up in office. That is what our Constitution is all about. You all just put things out the way that you want them in the City of Hampton. This has got to stop. You turn

around and you don't like something, so you just say we will change it. As Mr. Boone said, the gang of four is right there to vote for it. I don't understand why the Mayor excused herself from this tonight. I think she should have a whole lot to say about this; that it is not fair. I feel that you are taking away the Constitutional right of somebody that wants to run for higher office and if they don't win - of course, maybe you are doing it because of Donnie Tuck.

Mr. Frank J. Ottofarro, Jr., 347 Wrexham Court, made the following statement: I am going to have to agree with Mr. Boone and Mr. Deerfield here. When you run for an office, you shouldn't be punished if you lose to be kicked out of the existing position that you were elected to do in the first place. To me, it seems like you are trying to get control over everything you are doing behind that bench. It is not fair to us, the taxpayers of this City who do the elections and who vote for who we want. It is not fair to the person who is getting ousted. I agree with Mr. Deerfield. This is not Constitutional. This does not need to happen. It sounds like you are trying to control everything you are doing from your seats. This is our City as a whole, Hampton citizens. Not just Hampton Council; not just the Mayor and City Manager. This is Hampton as a whole. This is our house. You are elected by us to help manage this house. I think you are overstepping your boundaries on this item. This should not happen.

Ms. Carole Garrison, President of the Virginia Peninsula League of Women Voters, made the following statement: Today you are looking at enacting a change to the charter which must go through the General Assembly. This change was put forward in a meeting in an off- Chambers Council outside which was not broadcast to the public. It appears on your agenda today and I saw no earlier notice of it until I looked on the agenda. This is another instance where you are having the one reading and one vote. If you do not happen to show up and you have no input, you have no idea something has passed until you read in the paper and it has already been voted on. This is a bad policy even though Hampton is continuously doing this. This policy can only exist if you are trying to limit public input into City affairs. Last year, Councilman Wallace brought this up in the assembly wish list agenda. At the time, he referred to the fact that neighboring localities did this and that was one of his recommendations as to why to do it. With one reading, you don't have time to verify information that is said in the meetings, but since it didn't get passed, I was able to verify it. This is actually not the case in the Peninsula cities. In Poquoson and Newport News, Councilmembers do not step down to run for Mayor. Neither do they in Williamsburg; however, Williamsburg's Mayor is not elected. On the Southside - Virginia Beach, Norfolk, Chesapeake and Suffolk, you do have to step down, but in Portsmouth, you do not. This is because they enacted this rule and at a later day (last year) they went back and undid what they had done previously in the last General Assembly session, so now you do not have to step down. Elections are very important as the outcome determines who will be placed to make the laws that affect all of our citizens. With this proposal, you are not targeting Councilmembers who are running for General Assembly to give up their seats as Mr. Stuart ran and he did not have to give up his seat, nor if the Mayor wanted to run would she have to give up her seat for a different office. However, this seems to be targeted to one specific Councilman. The problem with when you enact a law to represent a majority of what the Council wants, you are not looking at what is good for the citizens. This is the same thing that happens when gerrymandering of districts occurs. Parties want to make sure that their people are elected. That does not make gerrymandering right. Neither does allowing this to happen without at least two public input sessions from the citizens make it right. May I make a suggestion to you? If this is something you truly wish to do, put a

referendum on the ballot and let the citizens decide if they think it should be done or not. Thank you for your time.

Mr. David Braunbeck, 2111 E. Pembroke Avenue, Apt 4B, made the following statement: Here we go again. Somebody is trying to pass something without the citizens' vote, Constitutional right being enacted by the law. I'm not a student of Constitutional Law, but we have the right to vote for whoever we wish to vote for, no matter what background they are from or anything. If this keeps up, the political system is going to upset the citizens and we (this whole country) are going to sweep some people out and we are going to vote some people in that are going to take care of what the citizens want. I think it is going to start at a local level then it is going to go to a State level and then it is going to go to a Federal level. I'm not trying to break a news story or anything. Take Mr. Ottofaro's father for instance. Mr. Ottofaro came up here before this Council (two or three different Councils if I remember correctly, if I remember my history) and asked please correct the wrong that has been done to me and my family. How many times are the citizens of Hampton going to have to get you people to listen? We are the citizens. We voted you in, we'll vote you out. Thank you.

Mr. John Krulis, 3636 Chesapeake Avenue, made the following statement: If I qualify for tax abatement, obviously, I am not a lawyer, so I don't know anything about the law. I just so happen to know that this is wrong. You are doing this for a purpose. I question whether the gavel should have been forfeited there because the person that now has the gavel is perhaps the man behind this. The rest of you folks - understand that you have joined this City's organization. You have been elected, but you are working for those people. Do you realize that? I think you think of yourselves as completely independent, but you are working for this City. They are the ones that put you there to begin with. Were they not? This is the kind of thing that is intended to squelch people. Understand? You are trying to silence people; you are trying to push back on people; you are circling your wagons. All of you - you are circling your wagons. You feel threatened. As well, you should be. If there is anything good that comes out of this current business with the Police Department it will hopefully be that the rest of the City starts looking (watching). Less than 20% of us voted you in. Understand that you were voted in by less than 20%. All of you, every one of you. You do not represent the people. You represent the people that voted for you. Sadly, we (many of the citizens) do not participate. To elect the President, you had to stand in line, and that is wonderful. When I go to vote for you folks, I am the only one in the room except for the people running it. Less than 20% voted you in. Whenever you make any kind of an effort to squelch peoples voices, people's opinions, people's right to speak, you are going in the wrong direction. Circling the wagons may make you feel safe for the moment, but sooner or later, it is going to come down and it is going to come down hopefully by some of you asking - Do I really have to vote with this vote all of the time? Do I always have to say yes to them? It is up to you. Thank you.

Vice Mayor Wallace commented (in the Mayor's defense) that this is not the Mayor's piece of legislation. He explained this is a piece of legislation that he introduced to this body during deliberations at our work session. He continued stating this in no way prohibits anybody's vote and does not preclude Councilmembers from voting on individuals that want to run for public office. He explained that this piece of legislation says to an individual that you cannot serve two masters at the same time and that a person has an option (when they run for public office) to select the office they would like to seek, for example, Mayor or Councilmember. He said in his opinion, it is not fair for a

person to run for Mayor from a safe seat that has already been given to them by the citizenry and want to abandon that seat if it is safe. He stated this legislation was introduced before we had this type of situation come into play such as with the last Mayoral election, and therefore, this is not a situation in response to what transpired; instead, it is what was developed, created and suggested prior to us having the situation occur.

Vice Mayor Wallace noted when he introduced the item, his intent was to clarify that a person must make full commitment to the constituents they serve as well as to the office they serve. For example, if they want to be Mayor, they are committing to putting their full being, body, effort and resources to serving in that capacity. He added that it is also difficult for the person who loses to come back into the fold with the same cohesiveness and camaraderie that was there prior. He clarified this is the reason he introduced this topic to his peers in the work session, and their response was they thought it made sense. It has now been introduced as part of our package for legislators to allow us to make modifications to our charter and we will have to vote on it tonight.

Councilman Stuart commented the vast majority of decisions Council makes do not require a referendum because we were placed here to make decisive decisions by citizens regarding property and other items. This gets to the heart of citizen decisions on who they want to run. He stated in the last Mayoral election, the citizens approached Councilman Tuck and he stated at forums that he was asked to run, and therefore, "found" himself in that position. He requested the item be deferred for 90 days while Council studies whether or not it is an issue.

City Attorney Cynthia Hudson commented to the extent there is any Council consensus for this to be considered, if at all, in the next General Assembly Session, the timing of the process by which to place bills in the General Assembly session would not permit a 90 day deferral. She explained we would have to meet the General Assembly filing deadline so that a member of the General Assembly would have time to file the bill.

Councilman Stuart noted we have heard passionate pleas, and therefore, asked Council to consider the deferral.

Councilman Hobbs asked what the proper time would be if we wanted to defer. Senior Deputy Attorney Ms. Lesa Yeatts replied tonight is the last scheduled meeting that Council would be able to properly advertise so that the amendment could be voted on and put before the General Assembly to be on the 2013 session.

Councilman Stuart stated in that case, he would seek to defer it for 30 days.

The Clerk asked for confirmation if Councilman Stuart meant the item would be deferred to the December 12, 2012 meeting. Councilman Stuart confirmed that was his intent.

Councilwoman Snead suggested deferring the item since the next Mayoral election is not for another four years. She stated this will allow time for citizen input and to be revisited for the next General Assembly Session. She further stated she is in support of this because it gives some members of Council an unfair advantage in that it depends on when you are elected to Council as to whether or not you can run for Mayor and keep your seat. For example, those on Council who were elected at the same time as the Mayor and decide in the future to run for Mayor, they would be giving up their Council

seat because they cannot run for both positions at the same time. She reiterated that in her opinion, all Councilmembers should have the same advantage and that is why she will be supporting this.

Councilman Moffett commented that he would be one of the Councilmembers who would benefit from going against this charter change and leaving it as it is because he could run for Mayor without risking anything. However, this is about a level playing field, and if anyone wishes to run for Mayor, they should be able to run for Mayor; however, there are other Councilmembers who may choose to run who would lose their seat. He said we need to level the playing field and anyone who runs for Mayor should think they are a good enough candidate that they will not need a parachute. He added due to the concerns, he is in favor of giving citizens additional time to study and understand the issue. He reiterated Vice Mayor Wallace's point that he (Vice Mayor Wallace) raised the same question during his (Councilman Moffett's) first term. He said he is in favor of supporting this tonight; however, if more time is needed for education, then he is in favor of that and is flexible.

Councilman Hobbs stated initially he was in favor of it; however, he is aware that citizens need further input, and therefore, if it takes longer to accomplish that, then he supports deferring the item.

HELD PUBLIC HEARING - Mayor Ward passed the gavel to Vice Mayor Wallace and did not participate in the discussion of this item.

Edwin M. Boone, Eddie Deerfield, Frank J. Ottofaro, Jr., Carole Garrison, David Braunbeck and John Krulis spoke in opposition to this proposed change to the City Charter.

DEFERRED (12/12/2012)

**Motion made by:** Councilmember Christopher G. Stuart

**Seconded by:** Councilmember Donnie R. Tuck

**Aye:** 5 - W. H. "Billy" Hobbs, Jr., Will Moffett, Chris Snead, Christopher G. Stuart, Donnie R. Tuck

**Nay:** 1 - George E. Wallace

**Abstain:** 1 - Molly Joseph Ward

Mayor Ward presided over the remaining portion of the meeting.

20. 12-0403 Amend Section 3.06 Of The City Charter To Require The First Meeting of A Newly Elected Council To Occur At The First Regularly Scheduled Meeting of the City Council.

**WHEREAS**, Section 3.06 of the Hampton City Charter currently provides that the first meeting of a newly elected council shall take place at 12:00 noon on the first day of July following their election, or if such day shall fall on Sunday, then on the following Monday; and

**WHEREAS**, the Hampton City Council deems it is in its best interest to amend Section 3.06 of the City Charter to provide that the first meeting of a newly elected council take place at 12:00 noon on the date of the first regularly scheduled meeting of the city council in July following the election; and

**WHEREAS**, it is deemed that this amendment is in the best interest of the citizens of Hampton,

**NOW, THEREFORE, BE IT RESOLVED**, by the city council that the General Assembly of the Commonwealth of Virginia be requested to amend Section 3.06 of the Charter of the City of Hampton to read as follows:

**Sec. 3.06. - Meeting of council; mayor and vice-mayor.**

The first meeting of a newly elected council shall take place on the date of the first regularly scheduled meeting of the city council in the month of July following the election at 12:00 noon at a place specified in the notice sent to the council members in accordance with the provisions of Sec. 3.04 of this charter pertaining to special meetings. At or before this first meeting, the oath of office shall be administered to the duly elected members as provided by law, and the council shall select by majority vote of all the members thereof one of their number to be vice-mayor for a two-year term. The clerk of the circuit court shall administer the oath of office to the duly elected officers. In the absence of the clerk the oath may be administered by any deputy clerk designated by the clerk.

The mayor shall preside over the meetings of council and shall have the same right to vote and speak therein as other members. He shall be recognized as the head of the city government for all ceremonial purposes, the purposes of military law, and the service of civil process. The vice-mayor, in the absence or disability of the mayor, shall perform the duties of mayor. In the absence or disability of both the mayor and the vice-mayor, the council shall, by majority vote of those present, choose one of their number to perform the duties of mayor.

Mayor Ward stated that this item had been discussed during the afternoon meeting, however, asked Ms. Bunting to give a brief background.

Ms. Bunting explained many of our communities have an organizational meeting of a newly elected Council at the first regularly scheduled meeting in July. Our Charter calls for the organizational meeting to be on July 1st at noon, unless July 1st falls on a Sunday, in which case the meeting is moved to a Monday. She stated a suggestion was made at the retreat to adopt the prevailing practice to have the meeting occur on a regularly scheduled meeting of the City Council; however, that would require a Charter change thus the purpose of this Public Hearing.

Mayor Ward stated no citizens signed up to speak and called for speakers from the audience. There being none, she closed the Public Hearing.

HELD PUBLIC HEARING - there were no speakers on the item.

APPROVED

**Motion made by:** Councilmember Will Moffett

**Seconded by:** Councilmember Christopher G. Stuart

**Aye:** 7 - W. H. "Billy" Hobbs, Jr., Will Moffett, Chris Snead, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly Joseph Ward

Nay: 0

21. 12-0404 Amend Sections 3A-6, 3A-7, 3A-8 Of The City Charter Pertaining To Initiatives And 3A-10 And 3A-11 Of The City Charter Pertaining To Referendums To Increase The Number Of Electors Required To Petition To Amend, Repeal Or Enact An Ordinance.

**WHEREAS**, Sections 3A-6, 3A-7, and 3A-8 of the city charter pertaining to initiatives currently provides that signatures of at least ten to twenty-five percent of the number of electors who cast their votes at the last preceding regular councilmanic election are necessary to petition to enact, amend or repeal an ordinance; and

**WHEREAS**, Sections 3A-10 and 3A-11 of the city charter pertaining to referendums currently provide that signatures of twenty-five percent but no less than four thousand of the number of electors who cast their vote in the last preceding regular councilmanic election are necessary to petition to amend or repeal an ordinance; and

**WHEREAS**, the Hampton City Council deems it is in the public interest to amend Sections 3A-6, 3A-7, 3A-8, 3A-10 and 3A-11 to increase the number of electors required to petition to enact, amend or repeal an ordinance to thirty percent of the electors voting for Governor in the last preceding gubernatorial election.

**NOW, THEREFORE, BE IT RESOLVED**, by the city council that the General Assembly of the Commonwealth of Virginia be requested to amend Sections 3A-6, 3A-7, 3A-8, 3A-10 and 3A-11 of the Charter of the City of Hampton to read as follows:

#### **INITIATIVE**

##### **Sec. 3A-6. - Procedure.**

Any proposed ordinance or ordinances, including ordinances for the repeal or amendment of an existing ordinance, may be submitted to the council by petition signed by electors equal in number to at least thirty percent of the electors voting for governor in the last preceding gubernatorial election. Such petition shall contain the proposed ordinance in full, and shall have appended thereto or written thereon the names and addresses of at least five electors, who shall be officially regarded as filing the petition, and who shall constitute a committee of petitioners for the purposes hereinafter stated. An affidavit signed by the committee of petitioners shall be attached to the petition stating the date the petition was first circulated.

All papers comprising the petition shall be assembled and filed with the clerk of the council, as one instrument, within one hundred twenty (120) days from the date stated in the affidavit that the petition was first circulated. Within fifteen days of the date the petition is filed, the clerk shall have the general registrar of the city certify that the petition has the number of signatures of electors required to meet the abovementioned percentage. After the general registrar has certified that the number of signatures of electors meets the required percentage, the clerk shall submit the petition to the council at its next regular meeting, and provisions shall be made for public hearings upon the proposed ordinance.

**Sec. 3A-7. - Petition for election.**

The council shall at once proceed to consider such petition and shall take final action thereon within sixty days from the date of the submission thereof. If the council rejects the proposed ordinance, or passes it in a form different from that set forth in the petition, or fails to act finally upon it within the time stated, the committee of the petitioners may require that it be submitted to a vote of the electors in its original form, or that it be submitted to a vote of the electors with any proposed change, addition or amendment, by the following procedure: The committee shall present to the clerk of the circuit court of the city a petition for such election, addressed to the court and signed by electors equal in number to thirty percent of the number of electors who cast their votes at the last preceding gubernatorial election. The petition shall contain the proposed ordinance in full in the form in which it is to be submitted to the electors. The petition and all copies thereof shall be filed with the clerk as one instrument. Within fifteen days after the filing thereof the clerk shall examine the same and ascertain and certify thereon whether the persons whose names are signed thereto are electors of the city, equal in number to thirty percent of the number of electors who cast their votes at the last preceding gubernatorial election; provided, however, the clerk of the circuit court shall have the general registrar certify which names on a petition are electors before certifying any petition himself. The general registrar and the clerk of the circuit court shall make their certifications within fifteen days of the date of filing. If it be found that the required number of electors have signed the petition, then the petition, with the certificate of the clerk thereon, shall be presented by the committee to the circuit court of the city, and thereupon the court shall forthwith enter an order calling and fixing a date for holding an election for the purpose of submitting the proposed ordinance to the electors of the city. Any such election shall be in accordance with general law. At least ten days before any such election, the clerk of the court shall cause such proposed ordinance to be published once in one or more newspapers of general circulation in the city.

**Sec. 3A-8. - Ballots and effect of voting.**

The ballots at such election shall conform to general law. With respect to each ordinance whose adoption, amendment, or repeal is sought, the following question shall be submitted: "Shall the ordinance entitled (title of ordinance) be (either adopted, amended, or repealed, as appropriate)?"

If a majority of the electors voting on such proposed ordinance shall vote in favor thereof, the proposed ordinance, upon the ascertainment and certification of the results of such election as in other special elections, shall become an ordinance of the city.

**Sec. 3A-9. - Ordinances adopted by the electors; how amended or repealed.**

No ordinance adopted by the vote of electors, as herein provided, shall be repealed or amended, except by vote of the electors; but the circuit court of the city may, on request of the council, by resolution, order that a proposed ordinance repealing or amending any ordinance so adopted be submitted to the electors at any election, or any special municipal election called for some other purpose, provided that the clerk of the court shall cause notice of the proposed submission of such proposed ordinance repealing or amending such ordinance, to be published once in one or more newspapers of the city not less than ten days prior to the election. If an amendment is proposed, the notice shall contain the proposed amendment in full, and the ballot shall be in the same form and the



vote shall have the same effect as in the case of an ordinance submitted to election by popular petition. The ballots and effect of voting shall be as provided in § 3A-8 of this charter.

## REFERENDUM

### Sec. 3A-10. - Petition for referendum.

At any time within thirty days following the adoption of an ordinance a petition signed by electors equal in number to at least thirty percent of the electors voting for governor in the last preceding gubernatorial election may be filed with the clerk of council requesting that any such ordinance be amended or repealed as stated in the petition. Such petition shall state therein the names and addresses of at least five electors, who shall be officially regarded as filing the petition, and who shall constitute a committee of petitioners for the purposes hereinafter stated. Referendum petitions shall contain the text of the ordinance or ordinances, the amendment or repeal of which is sought, and shall contain the proposed amendment, if an amendment is demanded.

### Sec. 3A-11. - Procedures.

The clerk to the council shall present the petition to the council at its next regular meeting, and thereupon the council shall consider the ordinance. If, within sixty days after filing of such petition, the ordinance is not repealed or amended as requested in such petition, the clerk to the council shall, if so requested by a writing signed by a majority of the committee and presented to the clerk to the council within twenty days after the expiration of sixty days, present to the clerk of the circuit court of the city, the petition and all copies thereof as one instrument together with a copy of the ordinance the repeal or amendment of which is sought. The clerk of the circuit court of the city shall examine the petition and ascertain and certify thereon whether the persons whose names are signed thereto are electors of the city, equal in number to thirty percent of the number of electors voting in the last preceding gubernatorial election; provided, however, the clerk of the circuit court shall have the general registrar to certify which names on a petition are electors before certifying any petition himself. The general registrar and the clerk of the circuit court shall make their certifications within fifteen days of the date of filing. If such signatures do amount to such percentage, the committee shall present the petition to the circuit court of the city, and thereupon the said court shall forthwith enter an order calling and fixing a date for holding an election for the purpose of submitting the ordinance to the electors of the city. Thereupon the ordinance shall *ipso facto* be further suspended from going into effect until such election shall have been held and shall then be deemed repealed or amended upon the approval by a majority of those voting thereon. Any such election shall be held in accordance with general law. At least ten days before any such election the clerk of the court shall cause the ordinance to be published once in one or more newspapers of general circulation in the city.

The ballots used when voting upon such ordinance shall conform in all respects to the ballots required for an initiative election under § 3A-8 hereof, and the method of voting in any such election shall be as prescribed in said section.

If in any such election the ordinance so referred or submitted be approved by a majority of the electors voting thereon, the said ordinance shall, upon the ascertainment and certification of the results of such election as in other special elections, go into effect as

an ordinance of the city.

**Sec. 3A-12. - Conflict of ordinances.**

If two or more ordinances adopted or approved at the same election conflict in respect to any of their provisions, such ordinances shall go into effect in respect to such of their provisions as are not in conflict, and the one receiving the highest affirmative vote shall prevail insofar as their provisions conflict.

**Sec. 3A-13. - Measures not subject to referendum.**

Ordinances passed providing for any work, improvement or repair certified by the city manager to be immediately necessary to protect public safety, public property, health or morals from imminent danger or protect the city from imminent loss or liability, shall not be subject to referendum. The certificate of the city manager in any such case shall be conclusive. Any ordinance adopted to authorize revenue levies shall not be subject to referendum. All other ordinances unless exempted by law shall be subject to referendum.

Ms. Hudson stated that presently our City Charter regarding the actions, initiative and referendum which are the means by which citizens of Hampton may petition the Council and Circuit Court to enact, amend or repeal an Ordinance requires a low number of citizens to act for such a significant action. For example, all measures require 25% of the number of signatures on a petition equal to 25% of the number of persons who voted in the last Councilmanic election. Voter turnout in Councilmanic elections has been low in recent years. According to the Registrar, only 17.5 % of Hampton registered voters voted in the last Councilmanic election for a total of 16,029 voters which for purposes of enacting, repealing or amending an Ordinance by one of those measures would require a little over 4,000 votes. When compared to the number of votes required to do other measures, there may be a desire for there to be a wider representation of voter participation on these petitions. She said we checked into how other localities do this and the percentages are higher in some situations. For example, Portsmouth requires that the number of signatures be the number that is equal to 30% of the number of people who voted in the last gubernatorial election immediately preceding the circulation of the petition. When looking at the number of people who voted in the last gubernatorial election in Hampton (32,440) there was a representation of 36% of registered voters which translates to approximately 9,700 signatures. She noted this was brought to Council for their consideration as opposed to there being any particular push to do it. The sole idea is whether or not Council or the citizens want to see a wider representation of the registered voters of Hampton to pass laws. Council indicated their desire to consider this for passage by the General Assembly as an amendment to the Charter.

Councilman Stuart asked how frequently items of this sort have occurred to give him an idea as to how critical this item is. Ms. Hudson replied during her tenure in the past 16 years, she recalls two such measures both initiated in the same year. One was an initiative measure related to Fort Monroe in an attempt to change the City Code provision related to the establishment of what used to be the Fort Monroe Federal Area Authority created by an Ordinance by the City Council. Certain events overtook that as it related to State action to create the Fort Monroe Authority. That effort went away but was underway until the State took action and rendered our Ordinance null and void so

there was no need for the initiative action to proceed. The other was the referendum as it related to the repeal of a Zoning Ordinance which affected the Parade of Homes development.

Councilman Stuart said his opinion on this is we are lacking a crisis, but have a solution. He said he does not intend on supporting this because on the rare occasions where citizenry decide they want or need to change something, keeping the threshold at a reasonable level speaks to openness and transparency.

Public Hearing:

Mayor Ward stated no citizens had signed up to speak and called for speakers from the audience. Two speakers addressed Council.

Mr. Eddie Deerfield, 1515 Garrow Circle, made the following statement: Here we go again. The Code of Ethics. Now its referendums. I agree with Ms. Hudson that we have only had two (examples) that I can remember in the past six years that I have been involved in politics of the City of Hampton. We don't need this. This is another way of Council putting their thumb on top of citizens. Leave it alone. Twenty-five percent is what it calls for now. Leave it at that. When we got the petitions up for Buckroe's Parade of Homes, we needed over 4,000 (signatures). We ended up with over 8,000, but after the Registrar looked at it, we had over 7,300. Hampton is full of apathy. In my opinion, it is because the City of Hampton's Council will not let the citizens speak and act on it. You talk about transparency, transparency, transparency. We have our City Manager running all over the country getting awards being written by staff and the Mayor. That is not transparency. You are continuously putting your thumb on us. When is it going to stop, Mayor Ward?

Mayor Ward asked Mr. Deerfield to try to keep his comments related to the referendum.

Mr. Deerfield continued with his statement: That is what I am trying to do. When is it going to stop? You are putting another thumb on top of us. Where are we going to get 30,000 people in the City of Hampton to come out to talk about having a referendum, talking against one, or talking about having one? Leave it at the 25%. I agree with Mr. Stuart and I am glad he is agreeing with the citizens - the citizens that speak up. The reason nobody comes out is because they know you don't listen. We can't even have a question answered here at the Council meeting because you all decided it is not the place to discuss the subject. We can't even get a single answer. "Mayor, can I do this? Eddie, no you can't." That is the way it should be, and it is not. Please don't do this. Please don't.

Ms. Carole Garrison, representative for the League of Women Voters, made the following statement: This is another issue where you are taking a vote without allowing citizen input, except for the people who happen to be here. As Councilwoman Snead mentioned regarding the Mayoral election, we do not have one coming up. We don't have an issue coming up that needs to go before the General Assembly, so why don't you take the time to get the citizen's input? Why do you have to push it through without any input and then make it a law? If there's a problem, it has to go through the General Assembly again which has a hard enough time getting their agenda done in the first place. If it has to go to the next General Assembly, so be it if you have no issues to address for it. Please consider the public's input. Thank you.

Mayor Ward called for additional speakers. There being none, she closed the Public Hearing.

Ms. Hudson clarified regarding the notice of Council's proposal of these measures that as was required by law, the advertisement of all of these proposed charter changes (the resign to run, the matter relating to proposal to possibly amend the provisions regarding initiative and referendum) had to be and were advertised in the Daily Press for two successive weeks in advance of the Public Hearing tonight so that people could be aware that Council is considering this and so that people could come out to have Council hear their thoughts about it. She reiterated the importance that everyone is aware that we did try to advertise it and give sufficient notice to get the input that is desired.

Councilman Tuck stated he believes the City of Portsmouth has its City elections in November which corresponds with the Presidential election and the General Assembly elections. He commented that moving the threshold from 25% of people who vote in our local elections to 30% of the people who voted in the last gubernatorial election is a high threshold. He said he understands we want to make it challenging for citizens to overturn the acts of Council whereby we give a go ahead to a potential developer to proceed. However, we adopted the Downtown Masterplan and the Phoebus Masterplan and are now relooking at both of those plans as if Councils make missteps. He said he does not think our body has such foresight to see the future that we can say with certainty that we made the right decision and therefore we should place this high standard for citizens who believe we did not do the correct action to try to get over.

Councilman Tuck continued stating people had 30 days to try to get 4,200 signatures and received over 8,000, 7,000 after those that had been tossed out. The people who were trying to get Fort Monroe as a National Park and tried to get us to have a stronger Ordinance – it took them two or three election cycles to try to get the number of votes they were trying to get which means it was not done easily. He said he does not think we should raise the bar for those who believe that an action by Council was not the right action to take. He said, in his opinion, we can wait 30 days to see if we can get that number and then proceed. He said we should not put impediments to citizens without getting citizen input about whether or not that is the procedure they want.

HELD PUBLIC HEARING Eddie Deerfield and Carole Garrison spoke in opposition to this item.

APPROVED - the motion failed due to the lack of a second.  
**Motion made by:** Vice Mayor George E. Wallace

22. 12-0405 Amend Section 7.01 Of The City Charter Pertaining To The School Board To Reflect Current Law Regarding Election Of School Boards.

**WHEREAS**, Section 7.01 of the city charter pertaining to the School Board does not reflect the current state of the law regarding the manner of selection of School Board members; and

**WHEREAS**, the Hampton City Council deems it is in the public interest to amend Section 7.01 to reflect current general law regarding the election of school boards

related city code provisions (together referred to as "applicable law").

**NOW, THEREFORE, BE IT RESOLVED**, by the city council that the General Assembly of the Commonwealth of Virginia be requested to amend Section 7.01 of the charter of the City of Hampton to read as follows:

**Sec. 7.01. - School board, composition, election and superintendent of schools.**

The city shall provide for public education through a city school board, a superintendent of schools, and the employees thereof. The school board and the superintendent of schools shall exercise all the powers conferred and perform all the duties imposed upon them by general law.

The school board shall be composed of seven (7) members who shall be elected for terms of four years in the manner prescribed by applicable law. Vacancies shall be filled in the same manner provided in Sec. 3.02 of this charter for the filling of vacancies of city council members, with the interim appointment to be made by a majority vote of the remaining members of the school board.

The division superintendent of schools shall be appointed and serve for a term of office as prescribed by general law.

Mayor Ward noted the purpose of this item is to bring us into compliance with State law.

Ms. Hudson agreed and stated the language is outdated and reflects the old law by which Council appointed school board members, but this change simply makes the language current to reflect the fact that school boards in Hampton are elected and have been for several years. She explained that the State law superseded ours and the referendum by which we went to elected school boards made it null and void. Rather than have void language in our charter, we are proposing we update it.

Public Hearing:

Mayor Ward stated no citizens signed up to speak and called for speakers from the audience. There being none, she closed the Public Hearing.

HELD PUBLIC HEARING - there were no speakers on the item.

APPROVED

**Motion made by:** Councilmember Chris Snead

**Seconded by:** Councilmember Christopher G. Stuart

**Aye:** 7 - W. H. "Billy" Hobbs, Jr., Will Moffett, Chris Snead, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly Joseph Ward

**Nay:** 0

23. 12-0395 Resolution authorizing amendments to the Hampton Roads Center and Hampton Urban Enterprise Zone boundaries pursuant to the Virginia Enterprise Zone Act.

**WHEREAS**, the Commonwealth of Virginia has adopted an Enterprise Zone Act §59.1-538 through §59.1-549 of the Code of Virginia (formerly §59.1-270 through §59.1-284) (the "Act"), with the purpose of stimulating business, commercial and industrial growth which would result in neighborhood, commercial and economic revitalization within distressed areas of the Commonwealth;

**WHEREAS**, the City of Hampton established the Hampton Roads Center and Hampton Urban Enterprise Zones pursuant to the Act;

**WHEREAS**, changes in the Act necessitate the amendment of the boundaries of the two Enterprise Zones to delete residential areas no longer benefited by the Act and to expand the boundaries to further stimulate business, commercial and industrial growth;

**WHEREAS**, the Act allows amendments to designated enterprise zones pursuant to the authority set forth in Section §59.1-544.A. of the Code of Virginia;

**WHEREAS**, by resolution adopted October 16, 2012, the Industrial Development Authority of the City of Hampton requested the City Council to authorize the amendment to the boundaries of the two Enterprise Zones;

**WHEREAS**, pursuant to the requirements of the Act, the City Council held a public hearing on November 14, 2012 to obtain public comment regarding the proposed amendments to the Hampton Roads Center and Urban Enterprise Zone boundaries; and

**WHEREAS**, the Council of Hampton, Virginia, finds that it is in the best interest of the citizens of Hampton to amend and enlarge the Hampton Roads Center and Hampton Urban Enterprise Zone boundaries in order to further encourage business and industrial growth in these areas by the private sector resulting in the revitalization of said areas.

**NOW THEREFORE, BE IT RESOLVED** by the Council of the City of Hampton Virginia:

1. That the boundary amendments to the Hampton Roads Center and Hampton Urban Enterprise Zone are approved and authorized; and

2. That the City Manager is authorized to submit all information needed to submit the application for the Enterprise Zone amendments and to meet other administrative program requirements.

Mayor Ward stated that at today's afternoon session, staff briefed Council on why we were making these boundary changes. She said no citizens signed up to speak and called for any speakers from the audience. There were two speakers.

Public Hearing:

Mr. Mike Koontz, 21 Enterprise Parkway, President of the Virginia Peninsula Chamber of Commerce, made the following statement: We represent about 1400 businesses on the Peninsula of which 400 reside in Hampton. The Chambers hopes you would look favorably upon this item as an increase in incentives for investments has a positive rate of return on job creation. Thank you for your service.

Mr. Guian Fernandez, 2 Betz Lane, made the following statement: My house is one of the ones that is under this development and I do not understand what they want to do or what is going to happen. I need for somebody to please explain this to us other than on a little post card which says your house is being canceled or deleted. What is that? I spoke to the lady (whose name is) on this card and she said we were being changed from a housing development to a commercial development. Does this have anything to do with our taxes?

Mayor Ward explained to Mr. Fernandez that it probably means he is being taken out of the Enterprise Zone and asked an Economic Development representative to address Mr. Fernandez' question.

Interim Director of Economic Development Mr. Michael Yaskowsky greeted those on the dais and the citizens of Hampton. He explained the Enterprise Zone Program is a business development program from the Commonwealth of Virginia. Previously, companies were incentivized to hire residents. Due to a change in the program from the Virginia Enterprise Zone Program, that incentive no longer exists, and therefore, now companies are incentivized based on how much they pay to the employees. We are modifying the boundaries and are removing the residential neighborhoods and aligning it with the commercial properties. He clarified that it does not affect anything; it just means that the individuals are no longer in the Enterprise Zone.

In response to Mayor Ward, Mr. Yaskowsky defined Enterprise Zones as competitive designations for localities to stimulate job creation and investment. For example, a company that resides in an Enterprise Zone may then access either grants for hiring new people or grants for making renovations or new construction. He clarified this is a business related economic development program.

Mayor Ward added that the program has changed to where residents are no longer allowed to be in the program. Mr. Yaskowsky agreed.

Vice Mayor Wallace said he believes the citizen is concerned about whether or not this change will impact his taxes and/or the value of his property. Vice Mayor Wallace assured Mr. Fernandez that this will not impact either of those.

Mr. Fernandez then asked what is in it for the City that we (residents) will be giving or losing to the City. Vice Mayor Wallace explained when you were included, the individual businesses in the area he was included in received an advantage by hiring you (Mr. Fernandez) because he was included in the district. Vice Mayor Wallace continued explaining that has been changed by the State and there is no longer an advantage for individual residential properties to be in those zones because there is no incentive for those businesses to hire people that reside in those zones. Therefore, the law has been changed to take you (a resident) out, but it does not impact you one way or the other. Mr. Yaskowsky agreed with Vice Mayor Wallace's explanation.

Mayor Ward called for additional speakers from the audience. There being none, she closed the Public Hearing.

Councilman Tuck asked for a show of hands from those in the audience who were present to receive clarification about that same type of misunderstanding.

At Mayor Ward's recommendation, a 10 minute recess was taken to allow Mr. Yaskowsky to address concerns from those in the audience. The meeting reconvened at 8:21 P.M.

Mayor Ward re-opened the Public Hearing and called for any additional speakers from the audience. There were no additional speakers, and therefore, she closed the Public Hearing.

HELD PUBLIC HEARING - Mike Koontz, President of the Virginia Peninsula Chamber of Commerce spoke in favor of this item. Guian Fernandez had questions on the item which were address by Michael Yaskowsky, Acting Director of Economic Development. During this item, the Mayor took a 10 minute recess at 8:11 p.m. to allow those citizens present to ask questions of Mr. Yaskowsky.

APPROVED

**Motion made by:** Councilmember Christopher G. Stuart

**Seconded by:** Vice Mayor George E. Wallace

**Aye:** 7 - W. H. "Billy" Hobbs, Jr., Will Moffett, Chris Snead, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly Joseph Ward

**Nay:** 0

24. 12-0409 Resolution Authorizing The Execution Of A License Agreement Between The City Of Hampton And The Virginia Rowing Club, Inc. To Use A Portion Of The Shoreline Adjacent To The East Of The Harbor Center Parking Garage Along The Hampton River.

**WHEREAS**, the City is the record owner of the shoreline adjacent and to the east of the Harbor Center Parking Garage along the Hampton River (henceforth "property");

**WHEREAS**, the Virginia Rowing Club, Inc. desires to use the property to promote sport and recreational rowing on the Hampton River;

**WHEREAS**, Parks and Recreation staff has determined that it is in the best interest of the City and the community to allow the Virginia Rowing Club to use the property; and

**WHEREAS**, the Council has determined that the terms and conditions of the License Agreement as set forth in the attachment hereto are acceptable.

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Hampton, Virginia as follows:



1. That it approves the License Agreement with the Virginia Rowing Club to use the property;
2. That the City Manager or her Authorized Designee is hereby authorized to execute and deliver to the Virginia Rowing Club the License Agreement in substantially the same form as the attachment hereto; and

Ms. Bunting introduced the item stating the Virginia Rowing Club, a group which offers rowing instruction classes for adults, high school and college students, desires to use the property to promote sport and recreation rowing on the Hampton River. She continued stating they have used the property since 1989 pursuant to various agreements, however, the terms have expired and it is time to renew the license agreement for a term of five years. She said City staff recommends approval of the resolution; however, a Public Hearing is required prior to adoption.

Mayor Ward asked if there were any questions for Ms. Bunting. There were none. Mayor Ward stated no citizens signed up to speak and called for speakers from the audience. As there were none, she closed the Public Hearing.

HELD PUBLIC HEARING - there were no speakers on the item.

APPROVED

**Motion made by:** Councilmember Christopher G. Stuart

**Seconded by:** Councilmember Chris Snead

**Aye:** 7 - W. H. "Billy" Hobbs, Jr., Will Moffett, Chris Snead, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly Joseph Ward

**Nay:** 0

## GENERAL ITEMS

## ORDINANCES

25. 12-0373 Ordinance to approve an agreement between the cities of Hampton, Newport News, Poquoson and the county of York to construct and operate a Peninsula Regional Animal Shelter on property located at 5849 Jefferson Avenue in Newport News, and to authorize the execution and delivery of same.

Ms. Bunting said the City of Newport News is the lead agency and is still making modifications to the agreement, therefore, this it is not ready for Council's action and the item is being deferred to the December meeting. She noted Newport News staff anticipates taking this to their Council this month, after which, we will be in a position to take action on it in December.

DEFERRED (12/12/2012)

**Motion made by:** Vice Mayor George E. Wallace

**Seconded by:** Councilmember Chris Snead

**Ayes:** 7 - W. H. "Billy" Hobbs, Jr., Will Moffett, Chris Snead, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly Joseph  
Ward  
**Nays:** 0

## APPOINTMENTS

26. 12-0418 Appointments to the Hampton Youth Commission

APPOINTED Sarah Angel, Rickey Barnes, Duasiane Benjamin, Elaina Blake, Cara Brooks, Amon Crisden, Trevor Gear, Nicole Greene, Rodney Hendricks, Grace Kelley, Marquise Lee, Ciara Lewis, Howie Manuel, Luke Miller, Lexy Parsons, Ryan Ramsey, Rebecca Seeger, Sharmae Stringfield, Gabrielle Taylor, Semora Ward, Michael York, and Kayla Young.

**Motion made by:** Councilmember Christopher G. Stuart

**Ayes:** 7 - W. H. "Billy" Hobbs, Jr., Will Moffett, Chris Snead, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly Joseph  
Ward

**Nays:** 0

27. 12-0275 Appointments to the Planning Commission.

DEFERRED (1/9/2013)

**Motion made by:** Councilmember Chris Snead

**Seconded by:** Vice Mayor George E. Wallace

**Ayes:** 7 - W. H. "Billy" Hobbs, Jr., Will Moffett, Chris Snead, Christopher G. Stuart, Donnie R. Tuck, George E. Wallace, Molly Joseph  
Ward

**Nays:** 0

## REPORTS BY CITY MANAGER, CITY COUNCIL, STAFF, COMMITTEES

Mayor Ward read the following statement prepared by the City Attorney summarizing the afternoon closed session: In closed session today, in addition to reaching consensus on appointments to the Youth Commission, the Council (1) gave direction and guidance to the City Manager, City Attorney and outside legal consultant regarding its desired approach to the external administrative review of the actions of City employees involved in the police cigarette investigation; (2) received a presentation of the report of legal consultant Karen Michael regarding Police Division employee issues which the Manager was asked to review for remedial action; and (4) received legal advice regarding continuation of a current employee benefit for the rest of the fiscal year and reached consensus to continue that benefit which is, specifically, payment of the group life insurance premium for our City of Hampton employees.

## MISCELLANEOUS NEW BUSINESS

Councilman Tuck noted that Mr. Ottofaro Jr. spoke about demolition at Harbor Square at the Public Comment portion of the meeting, particularly the presence of asbestos and that we may not be handling that situation properly. He expressed concern that while the City Manager or someone may address the issue with Mr. Ottofaro privately, there

may be a large audience under the impression that we are not doing things properly. He asked whether or not this is the appropriate place and time to address that issue.

Ms. Bunting stated she did not have documents regarding that topic with her as she did not know that question would come up; however, she has emailed the Executive Director of the Hampton Redevelopment and Housing Authority (HRHA) Mr. Ronald Jackson, Community Development Director Mr. Terry O'Neill and Building Inspector Mr. Steve Shapiro requesting documentation. She said we have taken this into account; however, she has not seen the documentation as of yet, and had not had that question posed prior to this evening. She said she would answer Mr. Ottofarro's question directly, address the issue at our next meeting, as well as have Communications Strategist Ms. Robin McCormick work on a piece for the weekly e-news.

Councilman Stuart suggested an episode of Round Robin focus on the company explaining the detailed process of the demolition. Ms. Bunting replied she would pass that suggestion on to Ms. McCormick; however, we have to be careful not to promote individual businesses, but there may be a way that information could be shared.

The meeting adjourned at 8:30 p.m.

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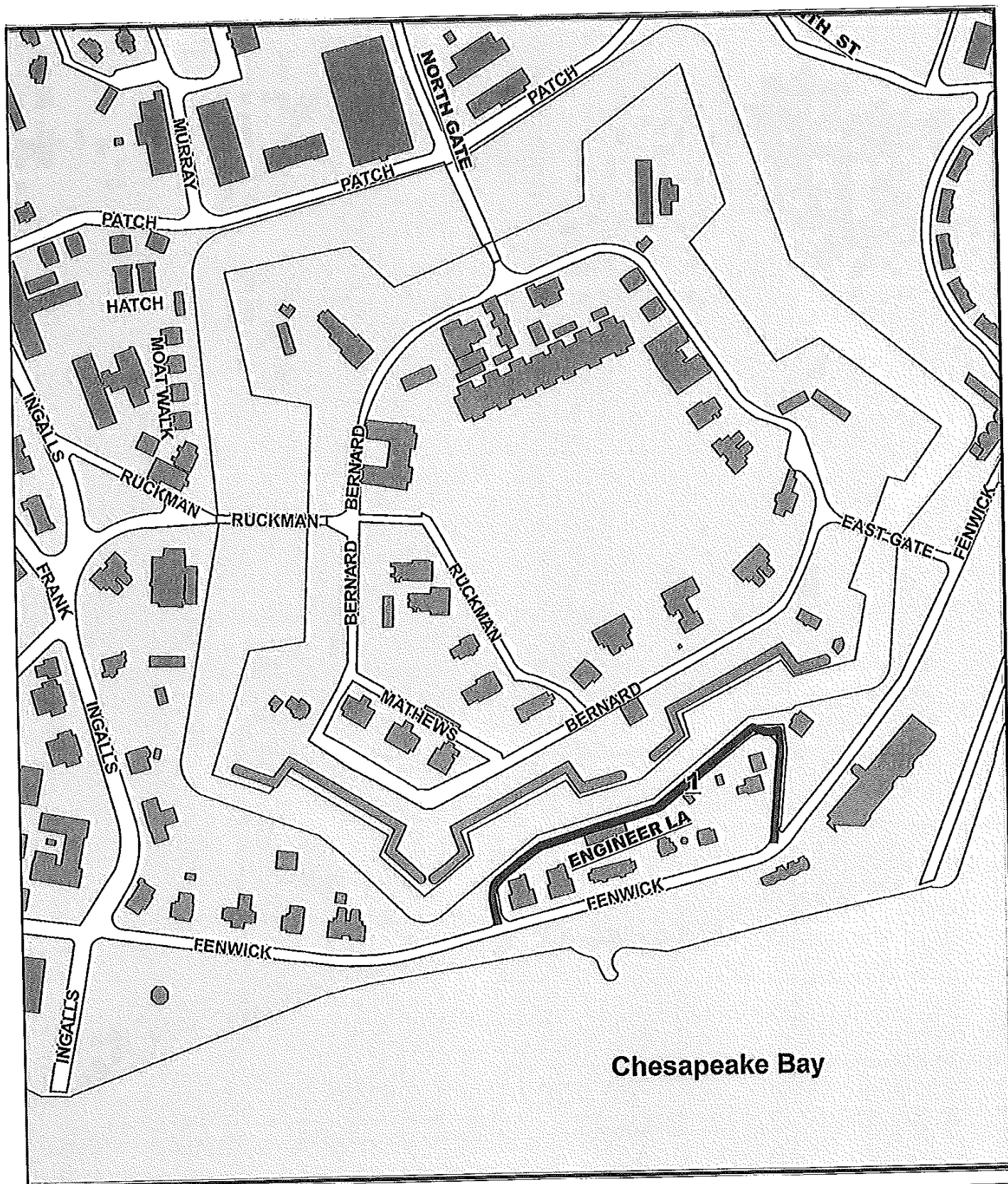
Molly Joseph Ward  
Mayor

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Katherine K. Glass, CMC  
Clerk of Council

Date approved by Council \_\_\_\_\_

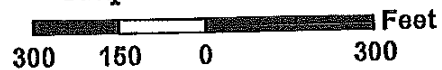




**Ft. Monroe, Va.**  
**VDOT Road Submittal (Supplement)**

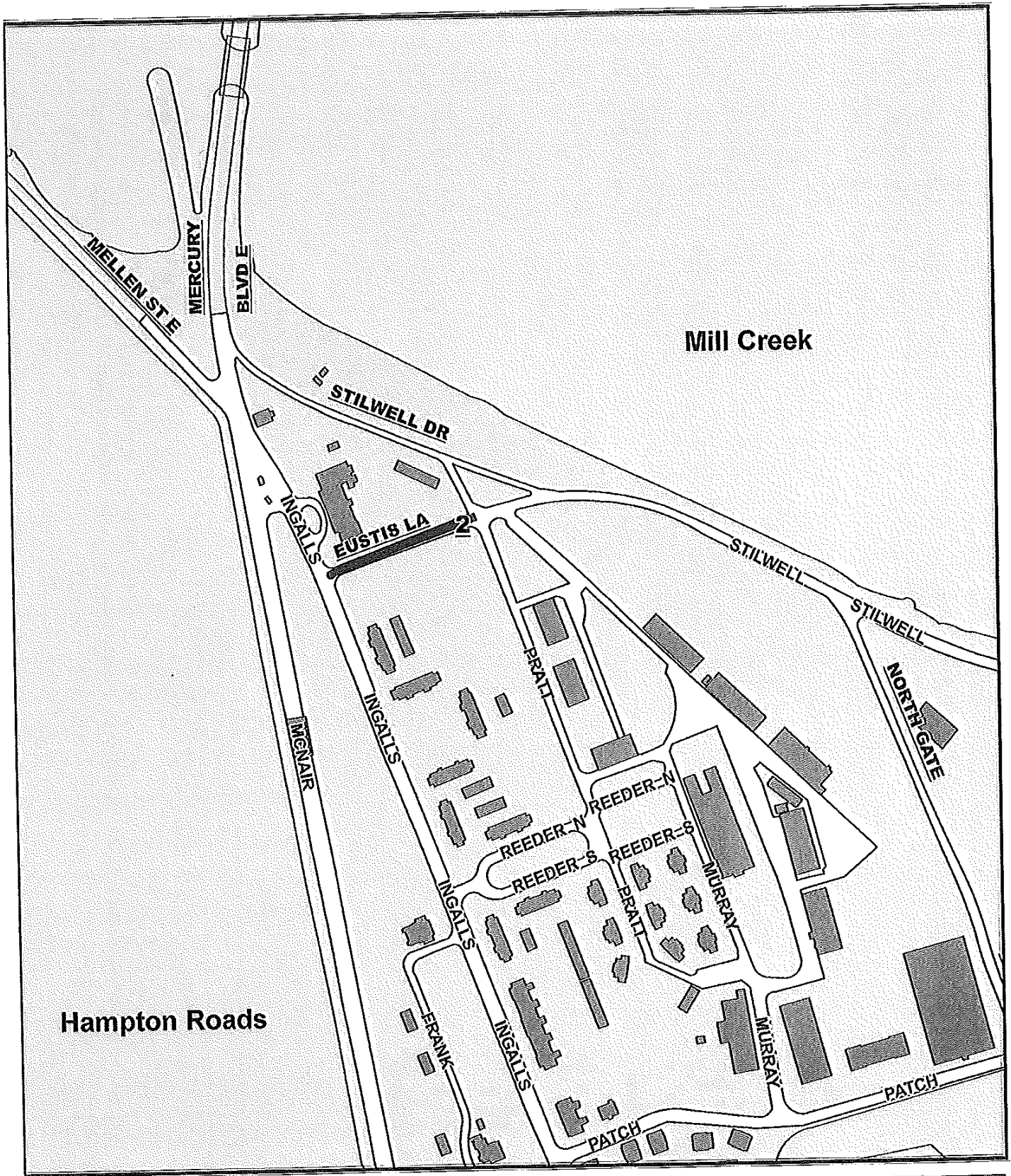
Prepared by: City of Hampton, Va.  
Department of Public Works - Engineering Engineering

Graphic Scale: 1" = 300'



Map printed: 19 October, 2012





**Ft. Monroe, Va.**  
**VDOT Road Submittal (Supplement)**

Prepared by: City of Hampton, Va.  
Department of Public Works - Engineering Engineering

Graphic Scale: 1" = 300'



Map printed: 19 October, 2012



**FY13 FIRST QUARTER BUDGET ADJUSTMENTS FOR  
COUNCIL ACTION**

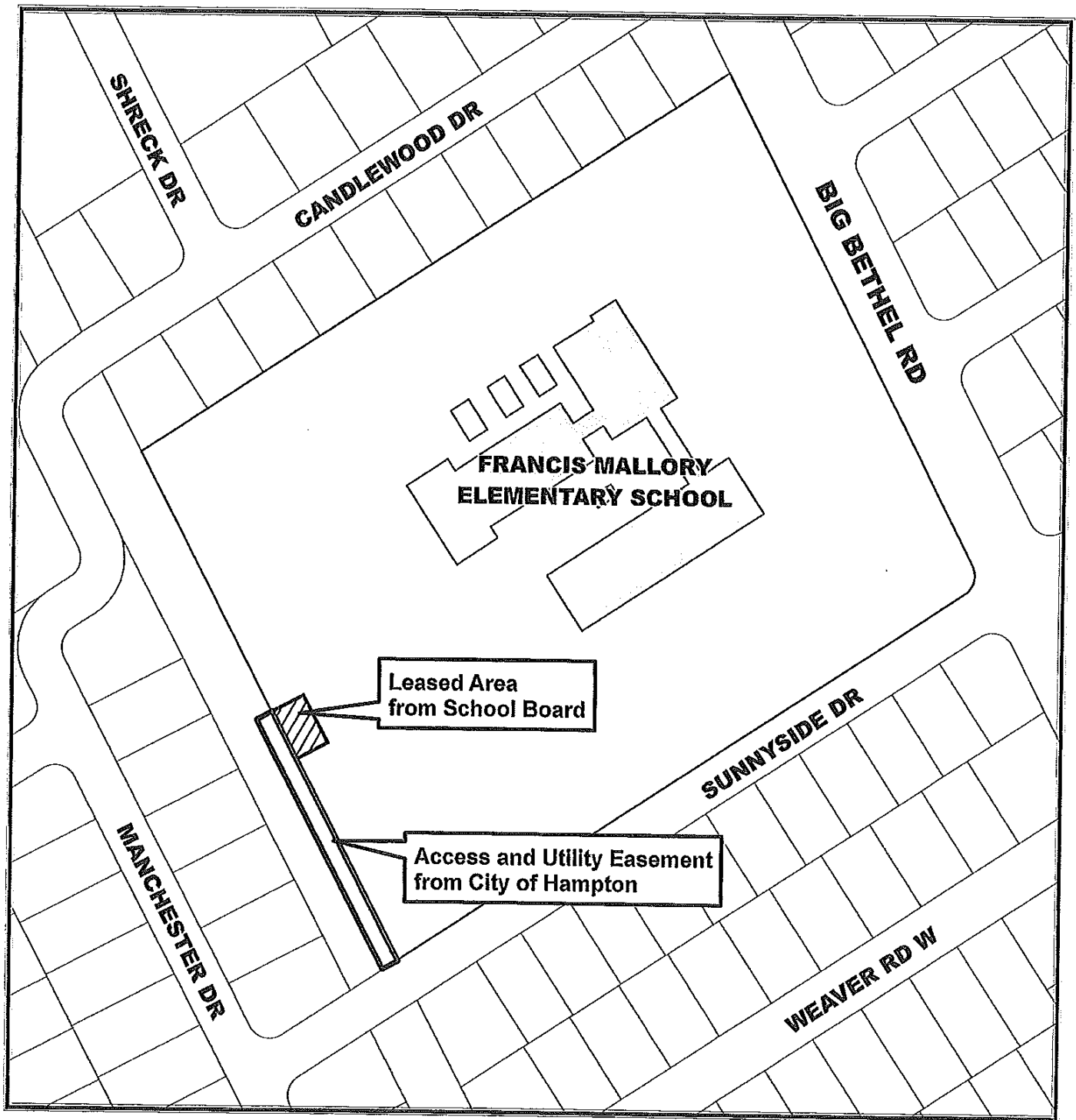
**General Fund**

<u>Department</u>	<u>Change</u>	<u>Comments</u>
<b>Arts Commission</b>		
Personal Services	0.00	Transfer of funds from Outside Agencies for Arts Commission Grants
Operating Expenses	42,500.00	
Capital Outlay	0.00	
Total	42,500.00	
<b>Civic and Community Support</b>		
Personal Services	0.00	Transfer of funds to Arts Commission for Arts Commission Grants
Operating Expenses	(42,500.00)	
Capital Outlay	0.00	
Total	(42,500.00)	
<b>Commissioner of Revenue</b>		
Personal Services	0.00	Transfer funds to Information Technology for annual IT Support Services
Operating Expenses	(35,400.00)	
Capital Outlay	0.00	
Total	(35,400.00)	
<b>Information Technology</b>		
Personal Services	0.00	Transfer of funds from Commissioner of Revenue for annual IT Support Services
Operating Expenses	35,400.00	
Capital Outlay	0.00	
Total	35,400.00	
<b>Parks</b>		
Personal Services	0.00	Transfer of funds from Recreation to cover equipment lease for Athletics Transfer of funds to Recreation to cover ASI Security expenses for Buckroe, Darling, Gosnold Hope Park, and Mingee Drive.
Operating Expenses	(1,460.00)	
Capital Outlay	0.00	
Total	(1,460.00)	
<b>Recreation</b>		
Personal Services	0.00	Transfer funds from Nondepartmental for Little England utilities. Transfer funds to Parks for equipment lease for Athletics Transfer of funds from Parks for ASI Security expenses
Operating Expenses	11,460.00	
Capital Outlay	0.00	
Total	11,460.00	
<b>Youth Education and Family Services</b>		
Personal Services	0.00	Transfer funds from Contingency to increase amount for grass roots mini-grants per City Manager
Operating Expenses	28,800.00	
Capital Outlay	0.00	
Total	28,800.00	
<b>Contingency</b>		
Personal Services	0.00	Transfer funds to increase Youth Education and Family Services grass root mini-grants per

**FY13 FIRST QUARTER BUDGET ADJUSTMENTS FOR  
COUNCIL ACTION**

<b>General Fund</b>			
<u>Department</u>	<u>Change</u>		<u>Comments</u>
Operating Expenses	(28,800.00)	City Manager.	
Capital Outlay	<u>0.00</u>		
Total	(28,800.00)		
<b>Nondepartmental</b>			
Personal Services	0.00	Transfer funds to Recreation for Little England Center utilities	
Operating Expenses	(10,000.00)		
Capital Outlay	<u>0.00</u>		
Total	(10,000.00)		

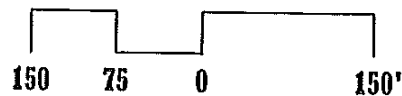




## Global Signal Acquisitions Access and Utility Easements

Prepared by: CITY of HAMPTON  
Dept. of Public Works - Engineering Services

Scale: 1" = 150'



Map printed: 26 October, 2012

**DISCLAIMER** Although the information contained herein is believed to be reliable, no warranty, expressed or implied, is made regarding the accuracy, completeness, legality, reliability, or usefulness of any information, either isolated or in the aggregate, unless expressly specified. Neither is this information intended as a substitute for applicants' obligation to retain its own independent professional advice from an engineer, surveyor, attorney, or the like.

# Rezoning Application #1294-2011 & Use Permit #1072-2011



SCI Virginia Funeral Services  
Inc.  
Vernon Stuart Drive & North  
Armistead Avenue

*Hampton*  
VIRGINIA

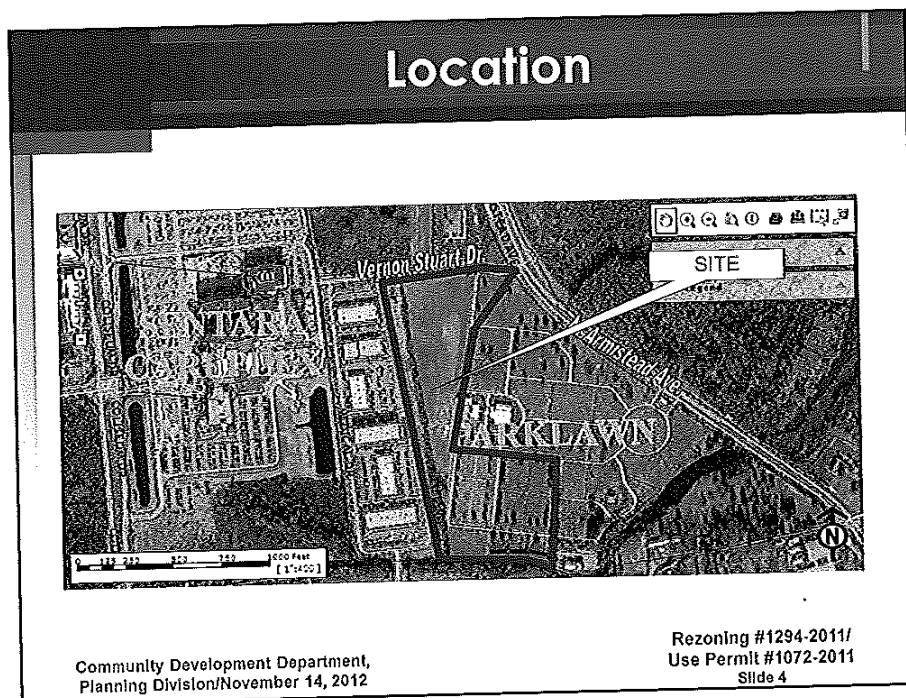
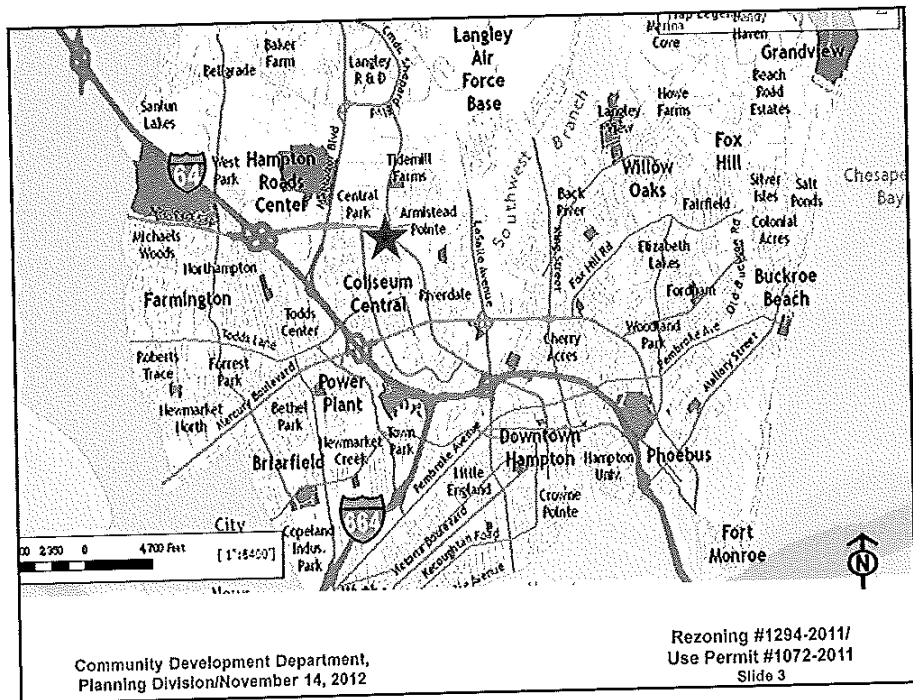
Hampton City Council  
November 14, 2012

## Applications

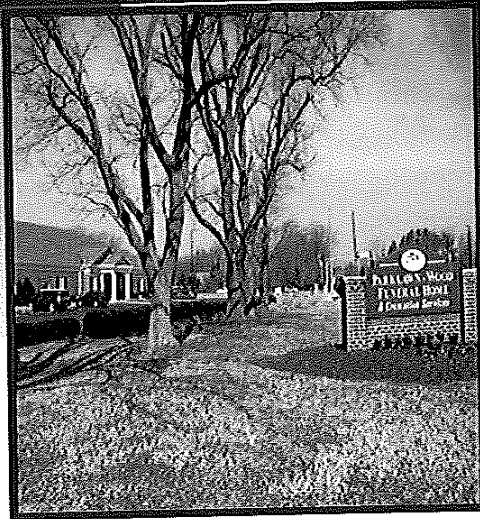
Rezone 14.495± acre lot from R-9 to R-R

Use Permit (UP) for cemetery

Rezoning #1294-2011/  
Use Permit #1072-2011  
Slide 2



## Background

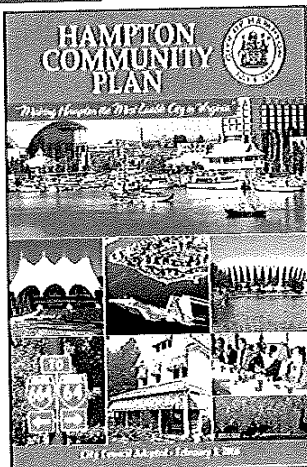


Community Development Department,  
Planning Division/November 14, 2012

- 4 Cemetery established 1969
- 4 Proposed expansion February 2011

Rezoning #1294-2011/  
Use Permit #1072-2011  
Slide 5

## Analysis



(Adopted 2006 by City Council, as amended)

Community Development Department,  
Planning Division/November 14, 2012

- 4 Provides quality community services & facilities
- 4 Compatible with surrounding development

Rezoning #1294-2011/  
Use Permit #1072-2011  
Slide 6

## Community Meeting

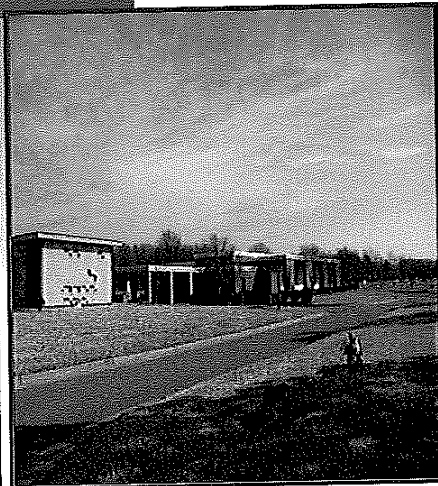
### September 2012

Sun	Mon	Tue	Wed	Thu	Fri	Sat
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	X 26	27	28	29
30						

Community Development Department,  
Planning Division/November 14, 2012

Rezoning #1294-2011/  
Use Permit #1072-2011  
Slide 7

## Summary of Proffered Conditions

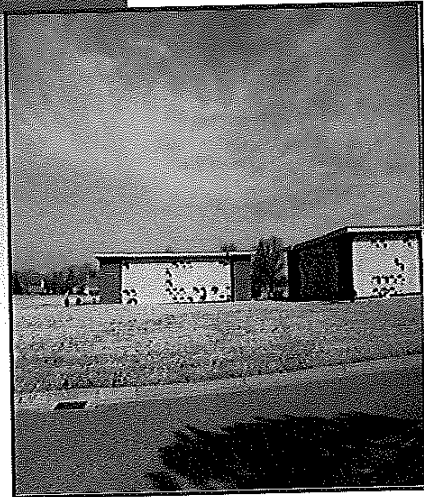


- 4 Cemetery use only
- 4 Maximum height, mausoleum buildings
- 4 Site developed according to concept plan dated August 2012
- 4 Elevations
- 4 Landscape buffer

Community Development Department,  
Planning Division/November 14, 2012

Rezoning #1294-2011/  
Use Permit #1072-2011  
Slide 8

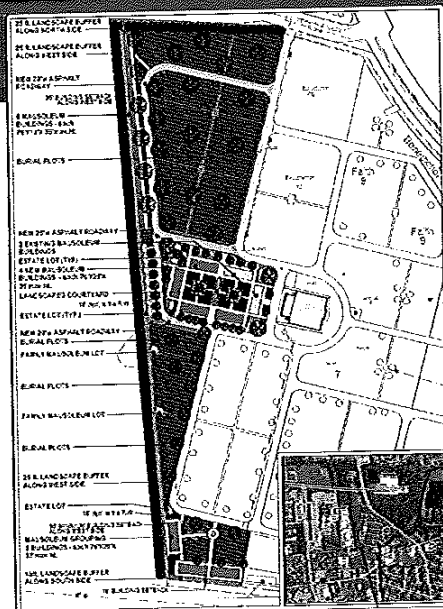
# Cemetery Conditions



Community Development Department,  
Planning Division/November 14, 2012

- 4 Site developed according to site plan dated August 2012
- 4 Regulations (local, state and federal)
- 4 Revocation

Rezoning #1294-2011/  
Use Permit #1072-2011  
Slide 9



Community Development Department,  
Planning Division/November 14, 2012

Rezoning #1294-2011/  
Use Permit #1072-2011  
Slide 10

## Recommendations

**Approve Rezoning No. 1294-2011  
with 9 proffers**

**Approve Use Permit No. 1072-2011  
with 3 conditions**

Community Development Department,  
Planning Division/November 14, 2012

Rezoning #1294-2011/  
Use Permit #1072-2011  
Slide 11

Prepared by:  
Kaufman & Canoles, P.C.  
2236 Cunningham Drive  
Hampton, VA 23666

After recording return to:  
Office of the City Attorney  
22 Lincoln Street  
Hampton, VA 23669, Attn: VTV

**PROFFER AGREEMENT**

THIS PROFFER AGREEMENT ("Agreement") made as of July 2, 2012, by and between SCI VIRGINIA FUNERAL SERVICES, INC., a Virginia corporation (the "Grantor"); and THE CITY OF HAMPTON, a municipal corporation of the Commonwealth of Virginia (the "Grantee"), with an address of 22 Lincoln Street, Hampton City Hall, Hampton, VA 23669.

**RECITALS**

A. SCI Virginia Funeral Services, Inc. ("SCI") is the owner of several parcel of property located in the City of Hampton, which it operates as Parklawn Memorial Park cemetery ("Parklawn"). One such parcel, identified as Tax Parcel Number 13000760 and more fully described on Exhibit "A" (the "Property"), is the subject of this Agreement.

B. Grantor has initiated a conditional amendment to the zoning map of the City of Hampton, Virginia, by petition addressed to Grantee so as to change the zoning classification of the Property from C-1 to R-R.

C. Grantor has requested approval of this Proffer Agreement.



D. Grantee's policy is to provide for the orderly development of land for various purposes, including commercial purposes, through zoning and other land development legislation.

E. Grantor desires to offer the City of Hampton certain conditions for the enhancement of the community and to provide for the highest quality and orderly development of the Property.

F. The conditions outlined in this Agreement have been proffered by Grantor and allowed and accepted by Grantee as a part of the amendment of the City Zoning Ordinance and the Zoning Map. These conditions shall continue in full force and effect until a subsequent amendment changes the zoning of the Property; provided, however, that such conditions shall continue if the subsequent amendment is part of the comprehensive implementation of a new or substantially revised zoning ordinance of Grantee.

NOW, THEREFORE, for and in consideration of the approval and acceptance by the City of Hampton, (the "City") of this Proffer Agreement, Grantor agrees that it will meet and comply with all of the following conditions in developing the Property. In the event the requested change of zoning classification is not granted by the City, these Proffers shall thereupon become null and void. Grantor, its successors, assigns, grantees and other successors in title or interest to the Property, voluntarily and without any requirement by or exaction from Grantee or its governing body and without any element or compulsion or quid pro quo for zoning, rezoning, site plan, building permit or subdivision approval, makes the foregoing declaration of conditions and restrictions governing the use and physical development and operation of the Property, and covenants and agrees that this declaration and the further terms of

this Agreement shall constitute covenants running with the Property, which shall be binding upon the Property, and upon all persons and entities claiming under or through the Grantor, its successors and assigns, grantees and other successors in interest or title to the Property.

### CONDITIONS

1. The only permitted use of the Property shall be as a cemetery, together with all uses necessarily or customarily associated with the interment of human beings, including, but not limited to, mausoleums, columbaria, chapels, administrative offices, parking areas, maintenance and storage areas, benches, ledges, walls, graves, roads, paths, landscaping, and soil storage consistent with federal, state, and local laws on erosion sediment control.

2. The site shall be developed in substantial conformance with the conceptual site plan layout prepared by Myllymaki Design, titled "Site Master Plan, Parklawn Memorial Park", and dated December 2010, revised August 2012.

3. The mausoleum buildings shall be constructed in accordance with the elevations submitted as Exhibit "B" attached hereto, using brick and masonry material.

4. The maximum height of the multi-user mausoleum buildings shall be thirty-five feet (35') and the maximum height of the family mausoleum buildings shall be twenty feet (20').

5. There will be a twenty-five foot (25') wide landscape buffer established along the northerly and westerly boundaries of the site and an eighteen foot (18') wide landscape buffer established along the southerly boundary of the site, as depicted on the conceptual site plan layout prepared by Myllymaki Design, titled "Site Master Plan, Parklawn Memorial Park", and

dated December 2010, revised August 2012. The landscape buffer shall consist of a continuous row of evergreen or deciduous trees and/or shrubs.

6. It is understood that all phases of the proposed project shall comply with all ordinances of the City of Hampton.

7. Grantor acknowledges that further lawful conditions and restrictions may be required in accordance with City Code, City Zoning Ordinances and all applicable codes and regulations, by Grantee during detailed administrative and site plan reviews. Grantor further acknowledges that the City Code and City Zoning Ordinances shall control if more restrictive than the proffered conditions.

8. All references hereinabove to zoning districts and to regulations applicable thereto, refer to the City Zoning Ordinance of the City of Hampton, in force as of the date the conditional rezoning amendment is approved by the Grantee.

9. The Grantor covenants and agrees that (1) the Zoning Administrator of the City of Hampton, Virginia, shall be vested with all necessary authority on behalf of the governing body of the City of Hampton, Virginia, to administer and enforce the foregoing conditions and restrictions specified in this Agreement, including (i) the ordering in writing of the remedying of any noncompliance with such conditions, and (ii) the bringing of legal action or suit to ensure compliance with such conditions, including mandatory or prohibitory injunction, abatement, damages or other appropriate action, suit or proceedings; (2) the failure to meet all conditions shall constitute cause to deny the issuance of any of the required building or occupancy permits as may be appropriate; and (3) the Zoning Map shall show by an appropriate symbol on the Map the existence of conditions attaching to the zoning of the subject Property on the Map and that

the ordinance and conditions may be made readily available and accessible for public inspection in the office of the Zoning Administrator and in the Planning Department and that this Agreement shall be recorded in the Clerk's Office of the Circuit Court of the City of Hampton, Virginia and indexed in the name of the Grantor and Grantee.

WITNESS the following signature and seal:

GRANTOR:

SCI VIRGINIA FUNERAL SERVICES, INC.,  
a Virginia corporation

By: Paul S. Hazelgrove  
Paul S. Hazelgrove, President

STATE OF VIRGINIA  
CITY/COUNTY OF Henrico, to-wit:

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of September, 2012, by Paul S. Hazelgrove, the President of SCI Virginia Funeral Services, Inc., a Virginia corporation, for and on behalf of the corporation. The said Paul S. Hazelgrove ☒ is personally known to me or ☐ has produced satisfactory evidence of identity.

My commission expires: 9-30-12

Donna S. Buchanan  
Notary Public (affix seal and registration number)

4060936\_6.DOC



Exhibit A  
Legal Description

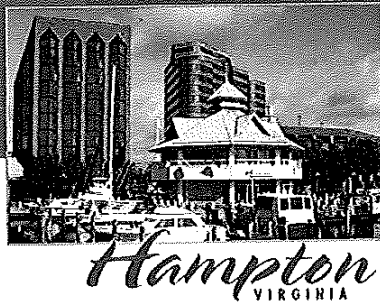
All that certain lot, piece or parcel of land, located in the City of Hampton, Virginia, containing 14.495 acres, more or less, and identified as "PARCEL 'E'", on that certain plat entitled "REVISED ZONING PLAT FOR SCI VIRGINIA FUNERAL SERVICES, INC., HAMPTON, VIRGINIA" dated June 21, 2012, made by Ernest C. Hawkins, Jr., and Associates, Surveyors and Planners, which said plat is attached hereto and hereby made a part hereof.

4060936\_6.DOC

USE PERMIT #1072-2011: CONDITIONS  
SCI Virginia Funeral Services Inc.  
CEMETERY

1. **Location of Cemetery/Site Plan**: The site shall be developed in substantial conformance with the conceptual site layout prepared by Myllymaki Design titled "Site Master Plan, Parklawn Memorial Park" and dated December 2010, revised August 2012.
2. **Regulations**: Prior to issuance of building permit, the cemetery operator must comply with all applicable local, state, and federal regulations as it relates to operation of a cemetery and compliance with the Virginia Department of Professional and Occupational Regulation (DPOR).
3. **Revocation**: Permittee shall comply with all applicable federal, state and local statutes, laws, ordinances, codes and regulations now in effect or hereafter adopted during the tenure of the Use Permit. The City may revoke the use permit for a violation of this condition including, but not limited to failure to pay taxes (real property or other applicable tax). The revocation process shall follow the procedure for approving the Use Permit.

## Rezoning Application #1304-2012 & Use Permit #1083-2012



Northampton Convalescent  
Center  
1028 Topping Lane

Hampton City Council  
November 14, 2012

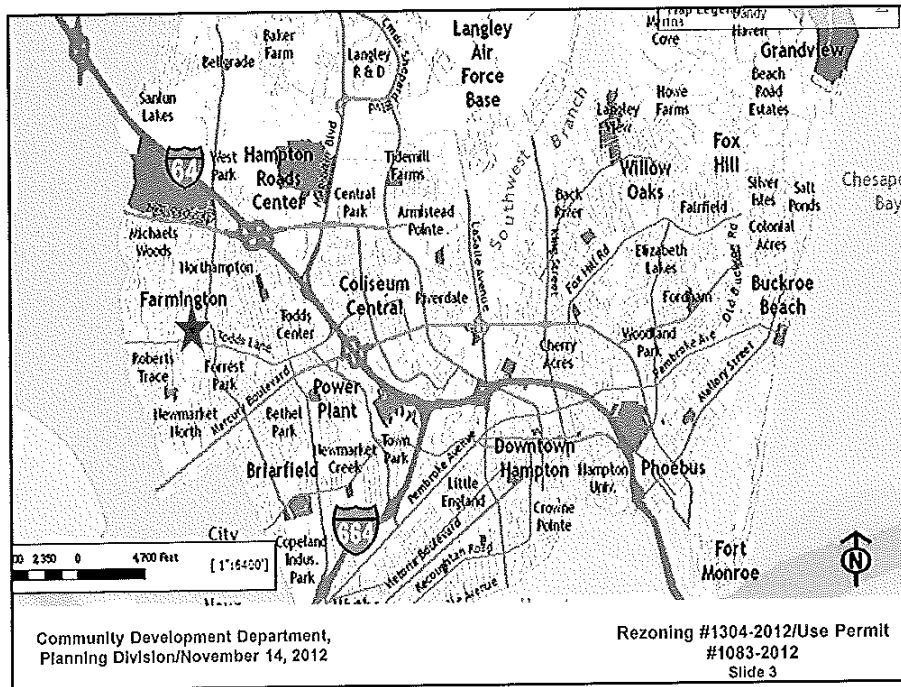
## Applications

Rezone from R-M to C-1

Use Permit for convalescent center

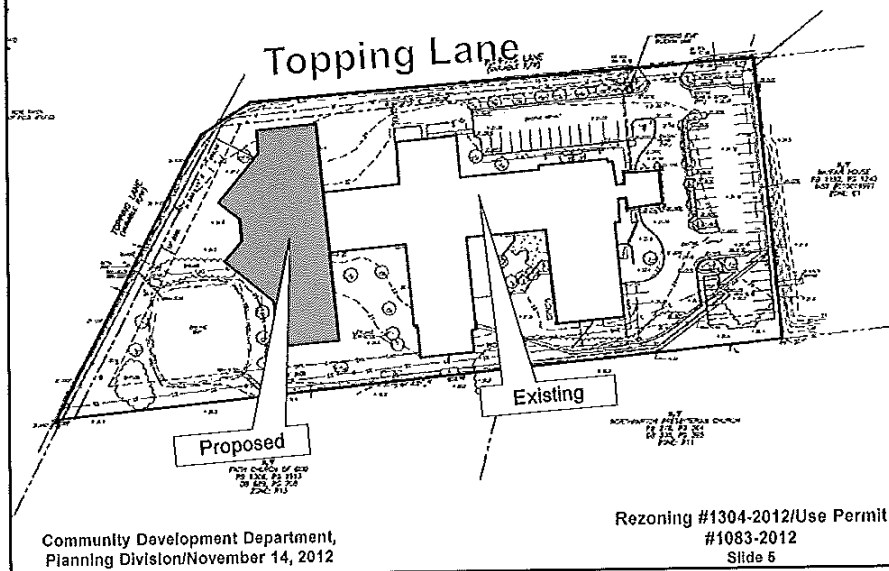
Community Development Department,  
Planning Division/November 14, 2012

Rezoning #1304-2012/Use Permit  
#1083-2012  
Slide 2

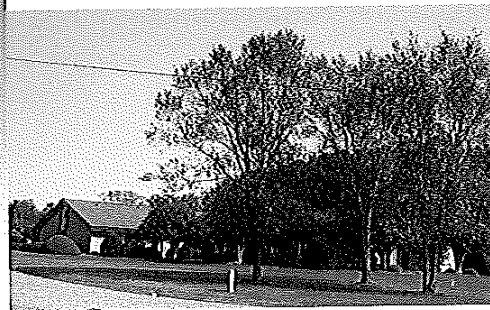




## Proposed Expansion



## Background



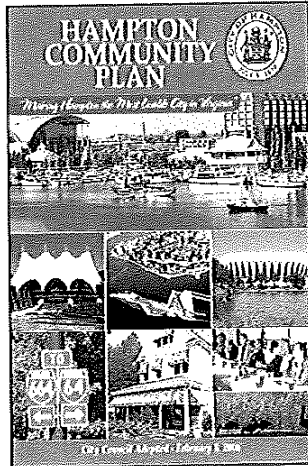
4 Rezoning & Use Permit Approved 1988

4 Use Permit for Expansion 2006

Community Development Department,  
Planning Division/November 14, 2012

Rezoning #1304-2012/Use Permit  
#1083-2012  
Slide 6

## Analysis



(Adopted 2006 by City Council, as amended)

Community Development Department,  
Planning Division/November 14, 2012

- 4 High density residential
- 4 Provides high quality community services
- 4 Maintain the existing character

Rezoning #1304-2012/Use Permit  
#1083-2012  
Slide 7

## Summary of Conditions



- 4 70 bed max.
- 4 Site plan
- 4 Building materials

Community Development Department,  
Planning Division/November 14, 2012

Rezoning #1304-2012/Use Permit  
#1083-2012  
Slide 8

## **Recommendations**

**Approve Rezoning No. 1304-2012  
with 9 proffered conditions**

**Approve Use Permit No. 1083-2012  
with 4 conditions**

Community Development Department,  
Planning Division/November 14, 2012

Rezoning #1304-2012/Use Permit  
#1083-2012  
Slide 9

Prepared by:  
Raymond H. Suttle, Jr.  
Jones, Blechman, Woltz & Kelly, P.C.  
701 Town Center Drive, Suite 800  
Newport News, VA 23606

LRSN: 4000567

### **PROFFER AGREEMENT**

THIS PROFFER AGREEMENT ("Agreement") made this 28<sup>th</sup> day of August, 2012, by and between VIRGINIA HEALTH SERVICES, INC. (the "Grantor"); and THE CITY OF HAMPTON, a municipal corporation of the Commonwealth of Virginia (the "Grantee"), with an address of 22 Lincoln Street, Hampton City Hall, Hampton, VA 23669.

### **RECITALS**

A. Virginia Health Services, Inc. is the owner of a certain parcel of property located in the City of Hampton, herein known as LRSN Number 4000567, and more fully described on "Exhibit A" (the "Property").

B. Grantor has initiated a conditional amendment to the zoning map of the City of Hampton, Virginia by petition addressed to the Grantee so as to change the zoning classification of the Property from R-M to C-1.

C. Grantor has requested approval of this Agreement.

D. Grantee's policy is to provide for the orderly development of land for various purposes, including commercial purposes, through zoning and other land development legislation.

E. Grantor desire to offer the City of Hampton certain conditions for the enhancement of the community and to provide for the highest quality and orderly development of the Property.

F. The conditions outlined in this Agreement have been proffered by Grantor and allowed and accepted by Grantee as a part of the amendment of the City Zoning Ordinance and the Zoning Map. These conditions shall continue in full force and effect until a subsequent amendment changes the zoning of the Property; provided, however, that such conditions shall continue if the subsequent amendment is part of the comprehensive implementation of a new or substantially revised zoning ordinance of Grantee.

NOW, THEREFORE, for and in consideration of the approval and acceptance by the City of Hampton (the "City") of this Agreement, Grantor agrees that it will meet and comply with all of the following conditions in developing the Property. In the event the requested change of zoning classification is not granted by the City, these Proffers shall thereupon become null and void. Grantor, its heirs, successors, assigns, grantees and other successors in title or interest to the property, voluntarily and without any requirement by or exaction from Grantee or its governing body and without any element or compulsion or quid pro quo for zoning, rezoning, site plan, building permit or subdivision approval, makes the foregoing declaration of conditions and restrictions governing the use and physical development and operation of the Property, and covenants and agrees that this declaration and the further terms of this Agreement shall constitute covenants running with the Property, which shall be binding upon the Property, and upon

all persons and entities claiming under or through the Grantor, its heirs, successors and assigns, grantees and other successors in interest or title to the Property; namely:

**CONDITIONS**

A. Location. The conditions apply only to 1028 Topping Lane (LRSN 4000567).

B. Operation.

1. The Grantor shall receive and maintain all required certifications and licensure.

2. The number of beds shall not exceed 70.

C. Site Development.

1. The expansion of the building shall be constructed and maintained in substantial conformance with the conceptual site plan titled "Conceptual Plan of Northampton Convalescent Center" prepared by LandTech Resources, Inc., dated August 14, 2012 and attached hereto.

2. The exterior finish of the building shall be the same as or substantially similar to the finish of the existing building. Final approval of building materials shall be granted by the Planning Director or designee.

3. All other applicable building, site plan, zoning codes and ordinances shall be met.

D. Further lawful conditions or restrictions against the Property may be required by Grantee during the detailed Site Plan review and administration of applicable codes and regulations of Grantee by all appropriate agencies and departments of Grantee, which shall be observed or performed by Grantor. Grantor acknowledges that additional

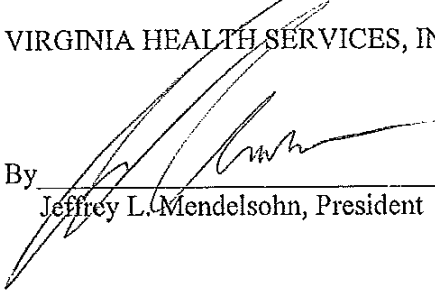
further lawful conditions or restrictions may be imposed by Grantee as a condition of approvals, including, but not limited to, final site plan approval.

E. All references hereinabove to zoning districts and to regulations applicable thereto, refer to the City Zoning ordinance of the City of Hampton, in force as of the date the conditional rezoning amendment is approved by the Grantee.

F. The Grantor covenants and agrees that (1) the Zoning Administrator of the City of Hampton, Virginia shall be vested with all necessary authority on behalf of the governing body of the City of Hampton, Virginia to administer and enforce the foregoing conditions and restrictions specified in this Agreement including (i) the ordering in writing of the remedying of any noncompliance with such conditions, and (ii) the bringing of legal action or suit to ensure compliance with such conditions, including mandatory or prohibitory injunction, abatement, damages or other appropriate action, suite or proceedings; (2) the failure to meet all conditions shall constitute cause to deny the issuance of any of the required building or occupancy permits as may be appropriate; and (3) the Zoning Map shall show by an appropriate symbol on the Map the existence of conditions attaching to the zoning of the subject Property on the Map and that the ordinance and conditions may be made readily available and accessible for public inspection in the office of the Zoning Administrator and in the Department of Community Development and that this Agreement shall be recorded in the Clerk's Office of the Circuit Court of the City of Hampton, Virginia and indexed in the name of the Grantor and Grantee.

WITNESS the following signatures:

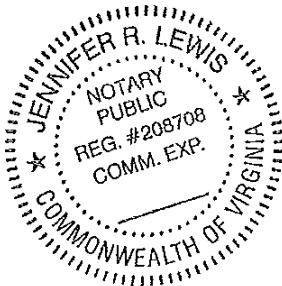
VIRGINIA HEALTH SERVICES, INC.

By   
Jeffrey L. Mendelsohn, President

STATE OF VIRGINIA  
CITY OF NEWPORT NEWS, to-wit:

I, Jennifer R. Lewis, the undersigned, a Notary Public in and for the City and State aforesaid, do hereby certify that Jeffrey L. Mendelsohn, whose name is signed to the foregoing instrument as President of Virginia Health Services, Inc., a Virginia corporation, has sworn to, subscribed and acknowledged the same before me in the City and State aforesaid this 28<sup>th</sup> day of August, 2012 on behalf of said corporation. He is personally known to me or has produced \_\_\_\_\_ as identification.

My commission expires: 3/31/14  
Registration Number: 208708



Jennifer R. Lewis  
Notary Public



**EXHIBIT A**

**LEGAL DESCRIPTION**

All that certain lot, piece or parcel of land situate, lying and being in the City of Hampton, Virginia, fronting on the south side of Topping Lane and containing 3.4552 acres, as shown on that certain plat entitled, "PLAT OF THE PROPERTY TO BE CONVEYED TO VIRGINIA HEALTH SERVICES, INC., 3.4552 ACRES, CITY OF HAMPTON, VIRGINIA", made by Coenen & Associates, Inc., Engineers-Planners-Surveyors, dated January 18, 1988, a copy of which plat is attached to deed dated June 20, 1988 between the Trustees of Faith Church of God and Virginia Health Services, Inc., duly of record in the Clerk's Office of the Circuit Court for the City of Hampton, Virginia in Deed Book 906, page 133, to which reference is here made.

527921

Northampton Convalescent Center  
UP#1083-2012

1. **Location**

- a. The Use Permit applies only to 1028 Topping Lane [LRSN 4000567].

2. **Operation**

- a. The operator shall receive and maintain all required certifications and licensure.
- b. The number of beds shall not exceed 70.

3. **Site Development**

- a. The expansion of the building shall be constructed and maintained in substantial conformance with the conceptual site plan titled "Conceptual Plan of Northampton Convalescent Center" prepared by LandTech Resources, Inc., dated 8/14/12 and attached hereto.
- b. The exterior finish of the building shall be the same as or substantially similar to the finish of the existing building. Final approval of building materials shall be granted by the Planning Director or designee.

4. **Nullification**

- c. The Use Permit shall become null and void if the use is not established within twelve (12) months of the date of approval by City Council.
- d. The Use Permit shall become null and void if the facility is not used for the permitted use for a period of six consecutive months.

Failure to comply with any of the above conditions shall justify revocation of the Use Permit by City Council.

## Conditional Privilege Application No. 130-2012



Phoebus Investors, LLC

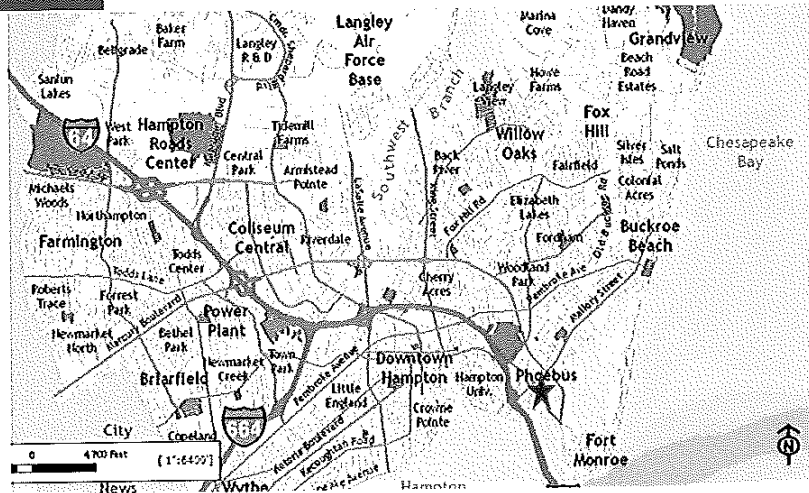
City Council  
November 14, 2012

## Application

Conditional Privilege

Live entertainment 2

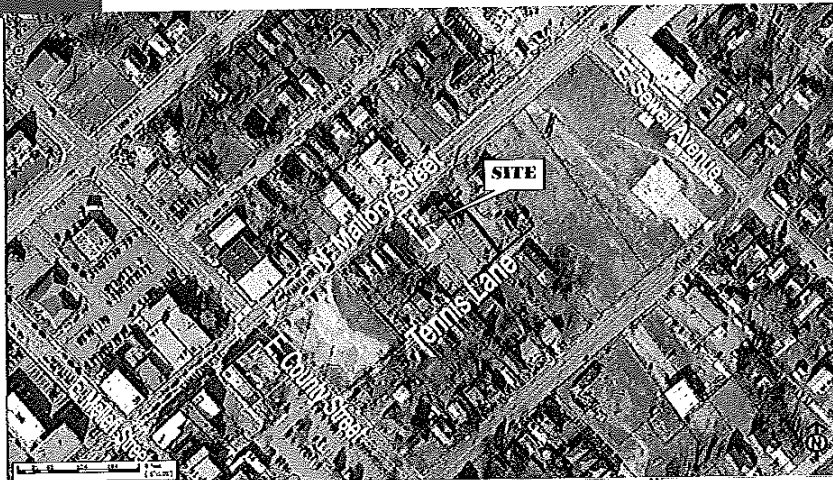
## Location Map



Community Development Department, Planning Division  
November 14, 2012

Conditional Privilege #130-2012  
Slide 3

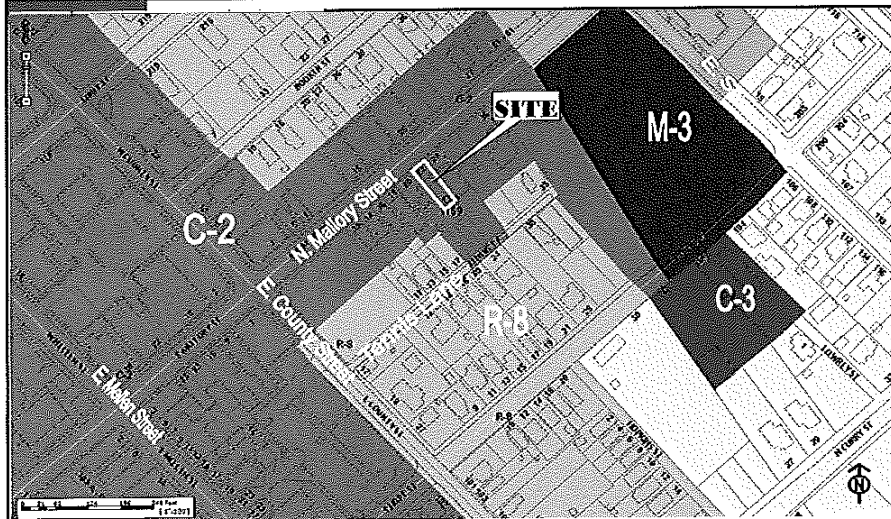
## Location



Community Development Department, Planning Division  
November 14, 2012

Conditional Privilege #130-2012  
Slide 4

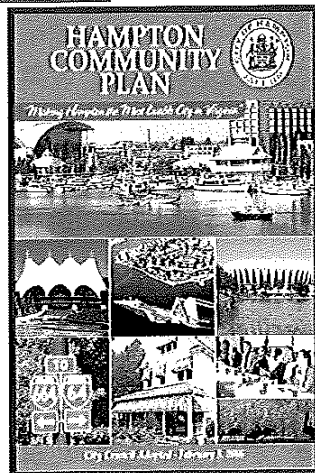
## Zoning



Community Development Department, Planning Division  
November 14, 2012

Conditional Privilege #130-2012  
Slide 5

## Public Policy



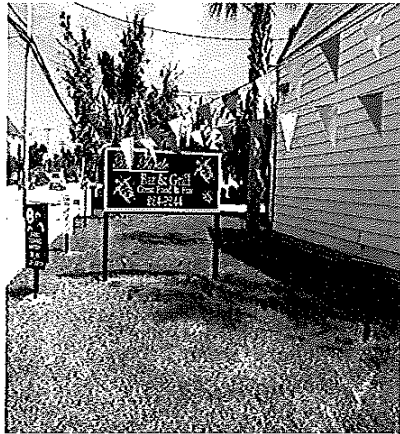
(Adopted 2006 by City Council, as amended)

- ✦ Expands entertainment opportunities
- ✦ Nurtures small business
- ✦ Promote Hampton as a retail destination

Community Development Department, Planning Division  
November 14, 2012

Conditional Privilege #130-2012  
Slide 6

## Summary of Conditions



- ⚡ Hours of operation
- ⚡ Sound
- ⚡ Capacity
- ⚡ ABC License
- ⚡ Term of Permit

Community Development Department, Planning Division  
November 14, 2012

Conditional Privilege #130-2012  
Slide 7

## Recommendation

**Approve**  
**Conditional Privilege Application**  
**No. 130-2012**  
**with 10 conditions**

Community Development Department, Planning Division  
November 14, 2012

Conditional Privilege #130-2012  
Slide 8

**Conditional Privilege Application  
No. 131-2012**



*Hampton*  
VIRGINIA

Tiffany Barber & Kimberly  
Williams T/A Mom's Tot Spot CDC  
502B Woodland Rd.

City Council  
November 14, 2012

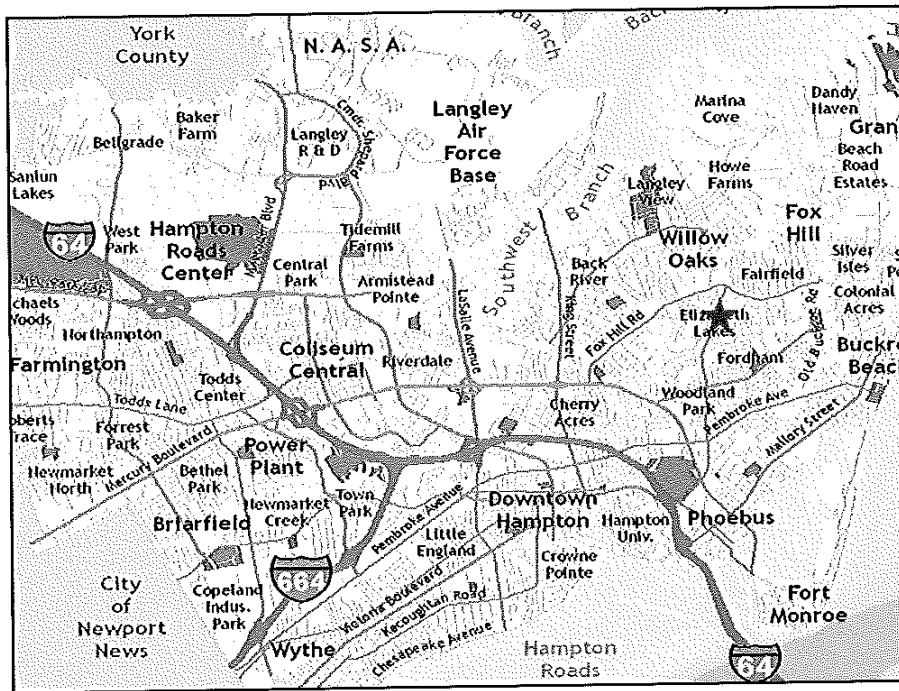
**Application**

- Up to 89 children
- Ages 16 months – 11 years
- 6.30am – 6.00pm

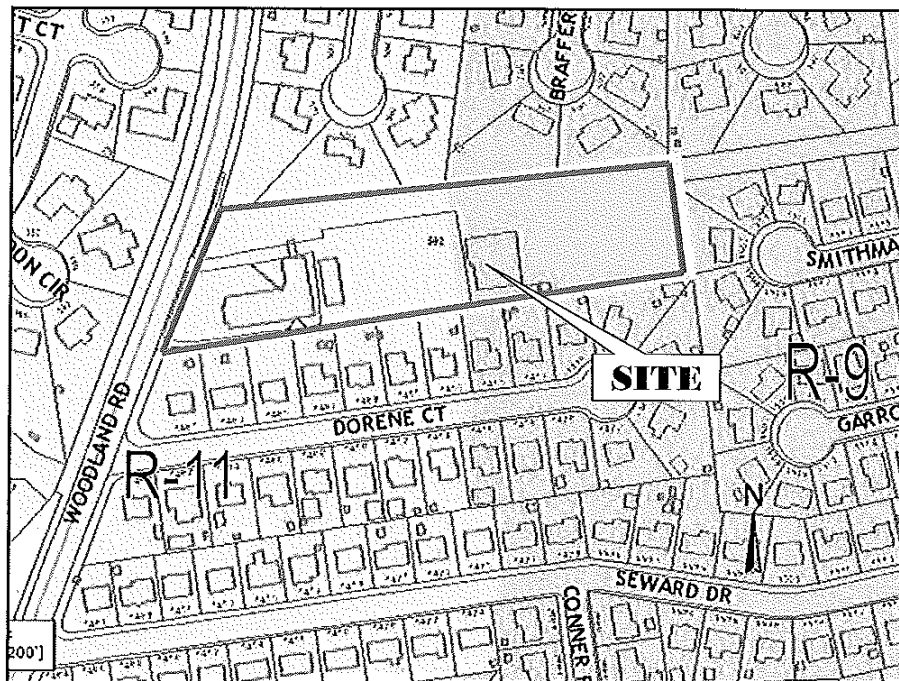
City Council  
November 14, 2012

Conditional Privilege No. 131-2012









## Background



- 4 Proposed opening  
November 2012

City Council  
November 14, 2012

Conditional Privilege No. 131-2012

# Community Meeting

September 2012

Sun	Mon	Tue	Wed	Thu	Fri	Sat
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						<b>X</b>

City Council  
November 14, 2012

Conditional Privilege No. 131-2012



## Conditions

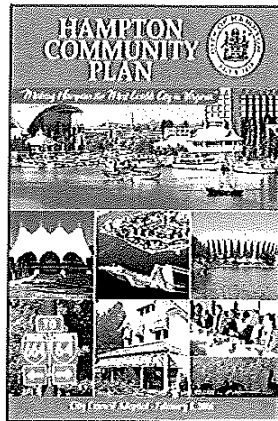


- ✦ Hours of operation
- ✦ Capacity
- ✦ Traffic Circulation
- ✦ Termination

City Council  
November 14, 2012

Conditional Privilege No. 131-2012

## Public Policy



- ✦ Promotes nurturing youth environment
- ✦ Promotes community facilities & services

City Council  
November 14, 2012

Conditional Privilege No. 131-2012

## Recommendation

**Approve  
Conditional Privilege Application  
No. 131-2012  
with 10 conditions**

City Council  
November 14, 2012

Conditional Privilege No. 131-2012